SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 142

THE UNITED STATES, PETITIONER

vs.

HOWARD C. MYERS

No. 143

THE UNITED STATES, PETITIONER

vs.

JOHN H. ARBLE

No. 144

THE UNITED STATES, PETITIONER

vs.

CHARLES C. MARTIN

No. 145

THE UNITED STATES PETITIONER

vs.

WALTER O. PLITZ

No. 146

THE UNITED STATES, PETITIONER

vs.

GEORGE H. SPITZ

ON PETITION FOR WRITS OF CERTIORARI TO THE COURT OF CLAIMS

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1 In the United States Court of Claims

I. *History of proceedings*

The original petitions were filed September 29, 1937.

A general traverse to the original petitions was filed November 8, 1937.

On April 3, 1940, the cases were argued and submitted together on merits by Mr. Robert M. Drysdale for plaintiffs, and by Mr. J. Frank Staley for defendant.

On January 6, 1941, the court filed findings of fact and conclusion of law. Plaintiff entitled to recover. Entry of judgment suspended to await the filing of a stipulation on the taking of proof as to the amount due plaintiffs, with opinion by Chief Justice Whaley.

On March 5, 1941, the defendant filed a motion for a new trial.

On March 12, 1941, the court filed an Order overruling defendant's motion for a new trial.

On June 12, 1941, the defendant filed a motion to refer the cases to a Commissioner which was allowed, and said cases were referred to Commissioner C. William Ramseyer.

On August 13, 1941, the plaintiff filed a motion for leave to file an amended petition in Nos. 43671, 43674, and 43675, which was allowed by the court on August 20, 1941, and amended petitions were filed in said cases.

On August 21, 1941, the plaintiffs filed a motion for judgment.

3 On September 3, 1941, a general traverse was filed to the amended petitions in Nos. 43671, 43674, and 43675.

On September 16, 1941, the court Ordered the plaintiffs' motion for judgment to the October Law Calendar for argument.

On October 6, 1941, the cases were argued and submitted together on plaintiffs' motion for judgment by Mr. Robert M. Drysdale for plaintiffs, and by Mr. J. Frank Staley for defendant.

On October 17, 1941, the court filed an Order withdrawing former findings, conclusion of law, and opinion, and remanding cases to the December Calendar for oral argument ab initio, as follows:

ORDER

On the court's own motion, it is ordered this 17th day of October 1941, that the special findings of fact, the conclusion of law, and opinion filed herein January 6, 1941, be and the same are vacated and withdrawn; and the case is now remanded to the December Calendar for oral argument ab initio.

On November 15, 1941, on motion of plaintiffs made therefor and allowed by the court, the cases were withdrawn from the

December Calendar and referred to Commissioner Ewart W. Hobbs for the taking of further proof.

In The United States Court of Claims

No. 43671

HOWARD C. MEYERS, PLAINTIFF

vs.

THE UNITED STATES OF AMERICA, DEFENDANT

II. Amended Petition

Filed August 20, 1941

To the Honorable the Chief Justice and Judges of the Court of Claims:

Plaintiff respectfully represents and shows:

(1) Plaintiff is a citizen of the United States and a resident of the State of Michigan, and has at all times borne true allegiance to the Government of the United States, and has not in any way aided, abetted or given encouragement to rebellion against the United States.

6 (2) Prior to September 1st, 1931, plaintiff was duly appointed a Customs inspector at the port of the city of Detroit; and ever since then has held said position and now is such an inspector. His salary as such inspector during all of the period of time hereinafter set forth was fixed at $2,100.00 per year.

(3) The Acts of Congress of February 7th, 1920 (41 Stat. L. 402) being an amendment to Section 5 of the Act of Congress of February 13th, 1911, which provided for the lading or unlading of vessels at night provides, as follows:

"SEC. 5. That the Secretary of the Treasury shall fix a reasonable rate of extra compensation for overtime services of inspectors, storekeepers, weighers, and other customs officers and employees who may be required to remain on duty between the hours of five o'clock postmeridian and eight o'clock antemeridian or on Sundays or holidays, to perform services in connection with the lading or unlading of cargo, or the lading of cargo or merchandise for transportation in bond or for exportation in bond or for exportation with benefit of drawback, or in connection with the receiving or delivery of cargo on or from the wharf, or in connection with the unlading, receiving, or examination of passengers' baggage, such rates to be fixed on the basis of one-half day's additional pay for each two hours or fraction thereof of at least one hour that the overtime extends beyond five o'clock postmeridian (but not

to exceed two and one-half days' pay for the full period from five o'clock postmeridian to eight o'clock antemeridian), and two additional days' pay for Sunday or holiday duty. The said extra compensation shall be paid by the master, owner, agent, or consignee of such vessel or other conveyance whenever such special license or permit for immediate lading or unlading or for lading or unlading at night or on Sundays or holidays shall be granted to the collector of customs, who shall pay the same to the several customs officers and employees entitled thereto according to the rates fixed therefor by the Secretary of the Treasury: Provided, That such extra compensation shall be paid if such officers or employees have been ordered to report for duty and have so reported, whether the actual lading, unlading, receiving, delivery, or examination takes place or not. Customs officers acting as boarding officers and any customs officer who may be designated for that purpose by the collector of customs are hereby authorized to administer the oath or affirmation herein provided for, and such boarding officers shall be allowed extra compensation for services in boarding vessels at night or on Sundays or holidays at the rates prescribed by the Secretary of the Treasury as herein provided, the said extra compensation to be paid by the master, owner, agent, or consignee of such vessel: Provided further, That in those ports where customary working hours are other than those hereinabove mentioned, the Collector of Customs is vested with authority to regulate the hours of customs employees so as to agree with prevailing working hours in said ports, but nothing contained in this proviso shall be construed in any manner to affect or alter the length of a working day for customs employees or the overtime pay herein fixed."

Said Act of Congress of February 7th, 1920 (41 Stat. L. 402), was made by reference a part of the Acts of Congress of June 17th, 1930 (Ch. 497, 46 Stat. L. 590) and known as the Tariff Act of 1930. The sections of said Tariff Act of 1930 applicable to plaintiff's claim are as follows:

"SEC. 450. UNLOADING ON SUNDAYS, HOLIDAYS, OR AT NIGHT.

No merchandise, baggage, or passengers arriving in the United States from any foreign port or place, and no bonded merchandise or baggage being transported from one port to another, shall be unladen from the carrying vessel or vehicle on Sunday, a holiday, or at night, except under special license granted by the collector under such regulations as the Secretary of the Treasury may prescribe" (46 Stat. L. 715).

"SEC. 451. SAME—EXTRA COMPENSATION.

Before any such special license to unlade shall be granted, the master, owner, or agent of such vessel or vehicle shall be required to give a bond in the penal sum to be fixed by the collector condi-

tioned to indemnify the United States for any loss or liability which might occur or be occasioned by reason of the granting of such special license and to pay the compensation and expenses of the customs officers and employees assigned to duty in connection with such unlading at night or on Sunday or a holiday, in accordance with the provisions of section 5 of the Act entitled 'An Act to provide for the lading or unlading of vessels at night, the preliminary entry of vessels, and for other purposes,' approved February 13, 1911, as amended. In lieu of such bond the owner, or agent, of any vessel or vehicle or line of vessels or vehicles may execute a bond in a penal sum to be fixed by the Secretary of the Treasury to cover and include the issuance of special licenses for the unlading of vessels or vehicles belonging to such line for a period of one year from the date thereof. At the request of the master, owner, or agent of any vessel, the collector shall assign customs officers and employees to duty at night or on Sunday or a holiday in connection with the entering or clearing of such vessel, or the issuing and recording of its marine documents, bills of sale, mortgages, or other instruments of title, but only if the master, owner, or agent gives a bond in a penal sum to be fixed by the collector, conditioned to pay the compensation and expenses of such customs officers and employees, who shall be entitled to rates of compensation fixed on the same basis and payable in the same manner and upon the same terms and conditions as in the case of customs officers and employees assigned to duty in connection with lading or unlading at night or on Sunday or a holiday" (46 Stat. L. 715).

9 Section 401 (46 Stat. L. 708) of said Tariff Act of 1930, defines the word vehicle as used in said act as follows:

"VEHICLE: The word 'vehicle' includes every description of carriage or other contrivance used, or capable of being used, as a means of transportation on land, but does not include aircraft."

(4) Such were the Acts of Congress that were in effect from September 1st, 1931, until August 31st, 1937, and during which time plaintiff performed the services for which extra compensation is herein sought and on which said Acts of Congress and T. D. 38290 hereinafter referred to, the claim of plaintiff is founded.

Regulation appertaining to said Acts of Congress, hereinbefore mentioned, were issued by the Bureau of Customs of the United States Treasury Department and are contained in the Customs regulations of 1931 and the provisions thereof which are applicable to plaintiff's claim, are as follows, viz:

Article 1228 dealing with extra compensation. Article 1229, defining night and holiday. Article 1230, appertaining to rate of compensation. Article 1231, dealing with services performed on

Sundays and holidays. Article 1446, dealing with official hours of certain Customs employees. Plaintiff's claim is also founded on said Customs regulation in so far, however, as they do not conflict with said Acts of Congress.

(5) In accordance with the provisions of said Act of Congress of February 7th, 1920 (41 Stat. L. 402), the Secretary of the Treasury fixed a reasonable rate of extra compensation for overtime services performed during night time, and on Sundays and holidays as required by said Act, and fixed said rate of compensation at the same rate as provided by said Act as aforesaid (T. D. 38290) and such order of the Secretary of the Treasury was effective during all of the period of time hereinafter set forth during which plaintiff performed the services for which compensation is herein sought.

(6) The extra compensation as so fixed by said Act of Congress of February 7th, 1920 (41 Stat. L. 402) was paid to the Customs inspectors and officers at the port of Detroit, Michigan, for the same kind of services as those for which compensation is herein sought and which were performed at night time and on Sundays and holidays until the opening of the Ambassador bridge, so-called, hereinafter mentioned, on or about November 15th, 1929.

(7) During the period of time commencing with September 1st, 1931, and ending August 31st, 1937, plaintiff was required by the collector of Customs at Detroit, Michigan, to and he did perform services as a Customs inspector at night time, being the hours between five o'clock postmeridian and eight o'clock antemeridian, and on Sundays and holidays at the port of Detroit, Michigan, at the following stations, viz: Detroit and Windsor Ferry; Walkerville Ferry; Detroit and Canada Tunnel; Ambassador bridge; Michigan Central Tunnel; Wabash Railway Ferries; Pere Marquette Railway Ferries; Grand Trunk Railway Ferries, and which said services so performed by him, were in connection with the unlading, receiving, and examination of passengers' baggage and the unlading of merchandise, baggage, and passengers arriving in the United States from foreign ports or places at certain of said stations, namely: Detroit and Windsor Ferry, Walkerville Ferry, Detroit and Canada Tunnel and Ambassador bridge, and in connection with the unlading of merchandise arriving in the United States from foreign ports or places at certain of said stations, viz, Michigan Central Tunnel, Wabash Railway Ferry, Pere Marquette Railway Ferry and Grand Trunk Railway Ferry. Plaintiff has caused to be prepared an itemized statement showing the amount due him for such services performed by him based upon said rate of overtime pay and showing the amounts due to plaintiff for night and Sunday and holiday

services so performed by him at each of said stations and during the periods of time within which said services were performed by him and which statement is annexed hereto and marked
11 "Schedule A" and made a part hereof. There is due to the plaintiff for said services the sum of $13,759.41 and there are no just credits or off-sets against said sum due plaintiff for said services and no part thereof has been paid.

(8) Said Detroit and Windsor Tunnel is a tube under the Detroit river connecting Detroit, Michigan, and Windsor, Ontario. Said Ambassador bridge is a bridge across the Detroit river connecting Detroit, Michigan, with Sandwich, Ontario. Ever since the opening of said tunnel and said bridge there has been over each of them respectively, a continuous flow of automobile and vehicular traffic including international bus service during twenty-four hours of every day of the week, including Sundays and holidays.

Said Ambassador bridge was open to traffic in the year 1929, and said tunnel was open to traffic in the year 1930. At about the time of the opening of said Ambassador bridge, the collector of Customs, or one of his deputies issued instructions that thereafter the customary working hours of Customs inspectors at the port of Detroit, would be any eight hour period of any twenty-four hours of any day during the week, including Sundays and holidays, and thereafter during the period of time covered by plaintiff's claim, plaintiff was not paid for the said services so performed by him at night time and on Sundays and holidays.

(9) The customary working hours at the port of Detroit, were then and now are from eight o'clock antemeridian until five o'clock postmeridian during week days, and such customary hours did not then nor do they now include Sundays or holidays or night time services as defined by said Act, and the instructions so issued by the said collector of Customs, or his deputy, were contrary to the provisions of said Act of Congress of February 7th, 1920 (41 Stat. L. 402).

(10) No action has been taken with respect to plaintiff's claim by Congress and no application has been made to Congress
12 for consideration of plaintiff's claim. The Customs inspectors at the port of the city of Detroit, Michigan, who performed similar night time, Sunday and holiday services, appointed an overtime committee to present the claims of plaintiff and other such Customs inspectors to the proper authorities and department. That committee filed with the collector of Customs, of Detroit, Michigan, a letter outlining their claims with a brief attached supporting their contention. At the request of the collector of Customs at Detroit, Michigan, said letter and

brief were transmitted to the controller of United States, and to the Commissioner of Customs, and to the Secretary of the Treasury. By letter bearing date of November 4th, 1936, to the collector of Customs at Detroit, Michigan, the Secretary of the Treasury declined to honor claims for such services.

(11) No assignment or transfer of plaintiff's claim or of any part thereof or interest therein has been made and no person other than the plaintiff is the owner thereof or interested therein.

(12) The plaintiff is justly entitled to recover from the United States for said services the said sum of $13,759.41 after allowing all just credits and off-sets.

(13) The said services performed by plaintiff in the month of September 1931, by custom established by the collector of Customs at Detroit, Michigan, were not due and payable until after October 1st, 1931.

(14) Plaintiff believes the facts as stated in this petition to be true.

Wherefore plaintiff prays judgment against the United States for the said sum of $13,759.41.

ROBERT M. DRYSDALE.
Attorney of Record for Plaintiff.

Business Address: 1538 Dime Bank Building, Detroit, Michigan.

13 [*Duly sworn to by Robert M. Drysdale; jurat omitted in printing.*]

Exhibit A—to amended petition

Inspector—HOWARD C. MYERS

Inclusive dates		Annual rate of pay	Percent off for economy	Detroit and Windsor Ferry		Walkerville Ferry		Detroit and Canada Tunnel		Ambassador Bridge		M. C. R. R. Tunnel		Wabash Ferries (night)	P. - M. Ry. Ferries (night)	P. M. Ry. (Sunday)
From—	To—			Night	Sunday, holiday	Night	Sunday, holiday	Night	Sunday, holiday	Night	Sunday, holiday	Night	Sunday, holiday			
9/1/31	11/1/31	$2,100	F									$416.78	$104.94			
10/2/31	12/31/31	"	F					$320.71	$58.30							
1/1/32	3/23/33	"	F									2,955.81	443.08			
4/5/33	6/25/33	"	15									461.83	39.64			
6/26/33	8/4/33	"	15							$215.57	$29.73					
8/7/33	10/22/33	"	15												$478.30	$2.48
11/17/33	1/30/34	"	15					371.69	59.46							
2/5/34	2/15/34	"	10					84.45								
2/16/34	4/5/34	"	10												304.33	
4/25/34	6/30/34	"	10							343.69	83.96					
7/1/34	3/31/35	"	5							1,409.57	365.52					
4/1/35	4/6/35	"	F							34.98						
4/25/35	4/30/35	"	F												35.00	
5/1/35	8/1/35	"	F											$405.39		
8/2/35	10/11/35	"	F							480.98	93.28					
10/12/35	10/15/35	"	F											2.92		
10/16/35	3/24/36	"	F					1,072.72	209.88							
4/24/36	7/21/36	"	F							443.15	151.58					
7/23/36	9/30/36	"	F											320.80		
10/1/36	5/26/37	"	F			$991.29	$338.14									
5/28/37	8/12/37	"	F											293.63		
	8/9/37	"	F												11.66	
	8/13/37	"	F	$11.66												
8/16/37	8/20/37	"	F							49.57						
Total Sundays, holidays							338.14		327.64		724.07		587.66			2.48
Total night				11.66		991.29		1,859.57		2,977.51		3,834.42		1,122.74	829.29	

Total Sunday	$1,979.99
Total night	11,629.48
Total	$13,506.97
To equalize the amount as per proofs	252.74
Grand total	13,759.41

17 *III. General traverse to the amended petition*

Filed September 3, 1941

And now comes the Attorney General, on behalf of the United States, and answering the amended petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the amended petition be dismissed.

(Sgd.) FRANCIS M. SHEA,
Assistant Attorney General.

OK J. F. S.
S. J. K.

18 In the United States Court of Claims

No. 43672

JOHN H. ARBLE, PLAINTIFF

vs.

THE UNITED STATES OF AMERICA, DEFENDANT

IV. Petition

Filed September 29, 1937

To the Honorable the Chief Justice and Judges of the Court of Claims:

Plaintiff respectfully represents and shows:

(1) Plaintiff is a citizen of the United States and a resident of the State of Michigan, and has at all times borne true allegiance to the Government of the United States, and has not in any way aided, abetted or given encouragement to rebellion against the United States.

20 (2) Prior to September 1st, 1931, plaintiff was duly appointed a Customs inspector at the port of the city of Detroit, and ever since then has held said position and now is such an inspector. His salary as such inspector during all of the period of time hereinafter set forth was fixed at $2,100.00 per year.

(3) The Acts of Congress of February 7th, 1920 (41 Stat. L. 402), being an amendment to Section 5 of the Act of Congress of February 13th, 1911, which provided for the lading or unlading of vessels at night provides, as follows:

"SEC. 5. That the Secretary of the Treasury shall fix a reasonable rate of extra compensation for overtime services of inspectors storekeepers, weighers, and other customs officers and employees

who may be required to remain on duty between the hours of five o'clock postmeridian and eight o'clock antemeridian or on Sundays or holidays, to perform services in connection with the lading or unlading of cargo, or the lading of cargo or merchandise for transportation in bond or for exportation in bond or for exportation with benefit of drawback, or in connection with the receiving or delivery of cargo on or from the wharf, or in connection with the unlading, receiving, or examination of passengers' baggage, such rates to be fixed on the basis of one-half day's additional pay for each two hours or fraction thereof of at least one hour that the overtime extends beyond five o'clock postmeridian (but not to exceed two and one-half day's pay for the full period from five o'clock postmeridian to eight o'clock antemeridian), and two additional days' pay for Sunday or holiday duty. The said extra compensation shall be paid by the master, owner, agent, or consignee of such vessel or other conveyance whenever such special license or permit for immediate lading or unlading or for lading or unlading at night or on Sundays or holidays shall be granted to the collector of customs, who shall pay the same to the several customs officers and employees entitled thereto according to the rates fixed therefor by the Secretary of the Treasury: Provided, That such extra compensation shall be paid if such officers or employees have been ordered to report for duty and have so reported, whether the actual lading, unlading, receiving, delivery, or examination takes place or not. Customs officers acting as boarding officers and any customs officer who may be designated for that purpose by the collector of customs are hereby authorized to administer the oath or affirmation herein provided for, and such boarding officers shall be allowed extra compensation for services in boarding vessels at night or on Sundays or holidays at the rates prescribed by the Secretary of the Treasury as herein provided, the said extra compensation to be paid by the master, owner, agent, or consignee of such vessel: Provided further, That in those ports where customary working hours are other than those hereinabove mentioned, the Collector of Customs is vested with authority to regulate the hours of customs employees so as to agree with prevailing working hours in said ports, but nothing contained in this proviso shall be construed in any manner to affect or alter the length of a working day for customs employees or the overtime pay herein fixed."

Said Act of Congress of February 7th, 1920 (41 Stat. L. 402), was made by reference a part of the Acts of Congress of June 17th, 1930 (Ch. 497, 46 Stat. L. 590) and known as the Tariff Act of 1930. The sections of said Tariff Act of 1930 applicable to plaintiff's claim are as follows:

"SEC. 450. UNLADING ON SUNDAYS, HOLIDAYS, OR AT NIGHT.

No merchandise, baggage, or passengers arriving in the United States from any foreign port or place, and no bonded merchandise or baggage being transported from one port to another, shall be unladen from the carrying vessel or vehicle on Sunday, a
22 holiday or at night, except under special license granted by the collector under such regulations as the Secretary of the Treasury may prescribe" (46) Stat. L. 715).

"SEC. 451. SAME—EXTRA COMPENSATION.

Before any such special license to unlade shall be granted, the master, owner, or agent, of such vessel or vehicle shall be required to give a bond in the penal sum to be fixed by the collector conditioned to indemnify the United States for any loss or liability which might occur or be occasioned by reason of the granting of such special license and to pay the compensation and expenses of the customs officers and employees assigned to duty in connection with such unlading at night or on Sunday or a holiday, in accordance with the provisions of section 5 of the Act entitled 'An Act to provide for the lading or unlading of vessels at night, the preliminary entry of vessels, and for other purposes,' approved February 13, 1911, as amended. In lieu of such bond the owner, or agent, of any vessel or vehicle or line of vessels or vehicles may execute a bond in a penal sum to be fixed by the Secretary of the Treasury to cover and include the issuance of special licenses for the unlading of vessels or vehicles belonging to such line for a period of one year from the date thereof. At the request of the master, owner, or agent of any vessel, the collector shall assign customs officers and employees to duty at night or on Sunday or a holiday in connection with the entering or clearing of such vessel, or the issuing and recording of its marine documents, bills of sale, mortgages, or other instruments of title, but only if the master, owner, or agent gives a bond in a penal sum to be fixed by the collector, conditioned to pay the compensation and expenses of such customs officers and employees, who shall be entitled to rates of compensation fixed on the same basis and payable in the same manner and upon the same terms and conditions as in the case of customs officers and employees assigned to duty in connection with lading or unlading at night or on Sunday or a holiday" (46 Stat. L. 715).

23 Section 401 (46 Stat. L. 708) of said Tariff Act of 1930, defines the word vehicle as used in said act as follows:

"VEHICLE: The word 'vehicle' includes every description of carriage or other contrivance used, or capable of being used, as a means of transportation on land, but does not include aircraft."

(4) Such were the Acts of Congress that were in effect from September 1st, 1931, until August 31st, 1937, and during which

time plaintiff performed the services for which extra compensation is herein sought and on which said Acts of Congress and T. D. 38290 hereinafter referred to, the claim of plaintiff is founded.

Regulations appertaining to said Acts of Congress, hereinbefore mentioned, were issued by the Bureau of Customs of the United States Treasury Department and are contained in the Customs regulations of 1931 and the provisions thereof which are applicable to plaintiff's claim, are as follows, viz:

Article 1228, dealing with extra compensation. Article 1229, defining night and holiday. Article 1230, appertaining to rate of compensation. Article 1231, dealing with services performed on Sundays and holidays. Article 1446, dealing with official hours of certain Customs employees. Plaintiff's claim is also founded on said Customs regulations in so far, however, as they do not conflict with said Acts of Congress.

(5) In accordance with the provisions of said Act of Congress of February 7th, 1920 (41 Stat. L. 402), the Secretary of the Treasury fixed a reasonable rate of extra compensation for overtime services performed during night time, and on Sundays and holidays, as required by said Act, and fixed said rate of compensation at the same rate as provided by said Act as aforesaid (T. D. 38290) and such order of the Secretary of the Treasury was effective during all of the period of time hereinafter set forth during which plaintiff performed the services for which compensation is herein sought.

24 (6) The extra compensation as so fixed by said Act of Congress of February 7th, 1920 (41 Stat. L. 402), was paid to the Customs inspectors and officers at the port of Detroit, Michigan, for the same kind of services as those for which compensation is herein sought and which were performed at night time and on Sundays and holidays until the opening of the Ambassador bridge, so-called, hereinafter mentioned, on or about November 15th, 1929.

(7) During the period of time commencing with September 1st, 1931, and ending August 31st, 1937, plaintiff was required by the collector of Customs at Detroit, Michigan, to and he did perform services as a Customs inspector at night time, being the hours between five o'clock postmeridian and eight o'clock antemeridian, and on Sundays and holidays at the port of Detroit, Michigan, at the following stations, viz: Detroit and Windsor Ferry; Walkerville Ferry; Detroit and Canada Tunnel; Ambassador bridge; Michigan Central Tunnel; Wabash Railway Ferries; Grand Trunk Railway Ferries; Miller Ferry Line, St. Clair, and which said services so performed by him, were in connection with the unlading, receiving, and examination of passengers' baggage and the

unlading of merchandise, baggage, and passengers arriving in the United States from foreign ports or places at certain of said stations, namely: Detroit and Windsor Ferry; Walkerville Ferry; Detroit and Canada Tunnel, and Ambassador bridge and in connection with the unlading of merchandise arriving in the United States from foreign ports or places at certain of said stations, viz. Michigan Central Tunnel, Wabash Railway Ferry, Grand Trunk Railway Ferry, and Miller Ferry Line, St. Clair. Plaintiff has caused to be prepared an itemized statement showing the amount due him for such services performed by him based upon said rate of overtime pay and showing the amounts due to plaintiff for night and Sunday and holiday services so performed by him at each of said stations and during the periods of time within which said services were performed by him and which statement is annexed hereto and marked "Schedule A" and made a part hereof. There is due to the plaintiff for said services the sum of $10,898.14 and there are no just credits or off-sets against said sum due plaintiff for said services and no part thereof has been paid.

(8) Said Detroit and Windsor Tunnel is a tube under the Detroit river connecting Detroit, Michigan, and Windsor, Ontario. Said Ambassador bridge is a bridge across the Detroit river connecting Detroit, Michigan, with Sandwich, Ontario. Ever since the opening of said tunnel and said bridge there has been over each of them, respectively, a continuous flow of automobile and vehicular traffic including international bus service during twenty-four hours of every day of the week, including Sundays and holidays.

Said Ambassador bridge was open to traffic in the year 1929, and said tunnel was open to traffic in the year 1930. At about the time of the opening of said Ambassador bridge, the collector of Customs, or one of his deputies issued instructions that thereafter the customary working hours of Customs inspectors at the port of Detroit would be any eight hour period of any twenty-four hours of any day during the week, including Sundays and holidays, and thereafter during the period of time covered by plaintiff's claim, plaintiff was not paid for the said services so performed by him at night time and on Sundays and holidays.

(9) The customary working hours at the port of Detroit were then and now are from eight o'clock antemeridian until five o'clock postmeridian during week days, and such customary hours did not then nor do they now include Sundays or holidays or night time services as defined by said Act, and the instructions so issued by the said collector of Customs, or his deputy, were contrary to

the provisions of said Act of Congress of February 7th, 1920 (41 Stat. L. 402).

(10) No action has been taken with respect to plaintiff's claim by Congress and no application has been made to Congress
26 for consideration of plaintiff's claim. The Customs inspectors at the port of the city of Detroit, Michigan, who performed similar night time, Sunday, and holiday services, appointed an overtime committee to present the claims of plaintiff and other such Customs inspectors to the proper authorities and department. That committee filed with the collector of Customs, of Detroit, Michigan, a letter outlining their claims with a brief attached supporting their contention. At the request of the collector of Customs at Detroit, Michigan, said letter and brief were transmitted to the controller of United States and to the Commissioner of Customs, and to the Secretary of the Treasury. By letter bearing date of November 4th, 1936, to the collector of Customs at Detroit, Michigan, the Secretary of the Treasury declined to honor claims for such services.

(11) No assignment or transfer of plaintiff's claim or of any part thereof or interest therein has been made and no person other than the plaintiff is the owner thereof or interested therein.

(12) The plaintiff is justly entitled to recover from the United States for said services the said sum of $10,898.14 after allowing all just credits and off-sets.

(13) The said services performed by plaintiff in the month of September 1931, by custom established by the collector of Customs at Detroit, Michigan, were not due and payable until after October 1st, 1931.

(14) Plaintiff believes the facts as stated in this petition to be true.

Wherefore plaintiff prays judgment against the United States for the said sum of $10,898.14.

ROBERT M. DRYSDALE.
Attorney of Record for Plaintiff.

Business Address: 2213 Dime Bank Building, Detroit, Michigan.

27 [*Duly sworn to by Robert M. Drysdale; jurat omitted in printing.*]

Schedule A—to petition

Inclusive dates		Annual rate of pay	Percent off for economy	Detroit and Windsor Ferry		Walkerville Ferry		Detroit and Canada Tunnel		Ambassador Bridge		M. C. R. R. Tunnel		Wabash Ferries (night)	P. M. Ry. Ferries (night)	G. T. Ry. Slip Dock (night)	G. T. Slip Dock (Sunday, holiday)	Miller Ferry Line St. Clair, Mich.	
From	To			Night	Sunday, holiday	Night	Sunday, holiday	Night	Sunday, holiday	Night	Sunday, holiday	Night	Sunday holiday					Night	Sunday, holiday
9/1/31	11/30/31	$2.100	F					$1,778.21	$396.44			$489.72	$63.28						
12/1/31	11/14/32	"	"															No record	No record
11/15/32	11/27/32	"	"	$52.47														$421.42	$158.56
11/28/32	3/31/33	"	"																
4/1/33	12/31/33	"	15							$215.57	$19.82			$2.48					
1/1/34	1/31/34	"	15																
2/1/34		"	15							157.41	73.46								
2/1/34	3/18/34	"	10																
4/1/34	6/30/34	"	10	472.30	$52.47														
7/1/34	2/8/35	"	5	1,024.78	232.01														
1/28/30/35		"	5			$11.08										$288.00	$22.16		
2/9/35	3/31/35	"	5													46.64			
4/1/35	4/6/35	"	5																
5/4/35	7/10/35	"	"	262.45	81.62											233.20	23.32		
7/11/35	8/15/35	"	"					1,568.38	279.84										
8/16/35	5/21/36	"	"													93.28			
5/22/36	10/31/36	"	"	731.79	103.24														
8/16, and 9/1/1936		"	"													23.32			
11/1/36	12/31/36	"	"	277.60	69.96														
Nov. 1936		"	"																
1/1/37	8/31/37	"	"	749.36	240.50														
Total Sundays holidays					501.40				676.28		93.28		93.28				45.48		158.56
Total night				3,611.15		11.08		3,346.59		372.98		489.72		2.48		684.44		421.42	

Total night	$8,939.80
Total Sundays and holidays	1,958.28
Grand total	$10,898.14

31 *V. General traverse to the petition*
Filed November 8, 1937

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained: and asks judgment that the petition be dismissed.

(Sgd.) SAM E. WHITAKER,
Assistant Attorney General.

OK J. F. S.

33 In the United States Court of Claims

No. 43673

CHARLES C. MARTIN, PLAINTIFF

vs.

THE UNITED STATES OF AMERICA, DEFENDANT

VI. Petition

Filed September 29, 1937

To the Honorable the Chief Justice and Judges of the Court of Claims:

Plaintiff respectfully represents and shows:

(1) Plaintiff is a citizen of the United States and a resident of the State of Michigan, and has at all times borne true allegiance to the Government of the United States, and has not in any way aided, abetted or given encouragement to rebellion against the United States.

34 (2) Prior to September 1st, 1931, plaintiff was duly appointed a Customs inspector at the port of the city of Detroit, and ever since then has held said position and now is such an inspector. His salary as such inspector during all of the period of time hereinafter set forth was fixed at $2,100.00 per year.

(3) The Acts of Congress of February 7th, 1920 (41 Stat. L. 402) being an amendment to Section 5 of the Act of Congress of February 13th, 1911, which provided for the lading or unlading of vessels at night provides, as follows:

"SEC. 5. That the Secretary of the Treasury shall fix a reasonable rate of extra compensation for overtime services of inspectors, storekeepers, weighers, and other customs officers and employees who may be required to remain on duty between the

hours of five o'clock postmeridian and eight o'clock antemeridian or on Sundays or holidays, to perform services in connection with the lading or unlading of cargo, or the lading of cargo or merchandise for transportation in bond or for exportation in bond or for exportation with benefit of drawback, or in connection with the receiving or delivery of cargo on or from the wharf, or in connection with the unlading, receiving, or examination of passengers' baggage, such rates to be fixed on the basis of one-half day's additional pay for each two hours or fraction thereof of at least one hour that the overtime extends beyond five o'clock postmeridian (but not to exceed two and one-half days' pay for the full period from five o'clock postmeridian to eight o'clock antemeridian), and two additional days' pay for Sunday or holiday duty. The said extra compensation shall be paid by the master, owner, agent, or consignee of such vessel or other conveyance whenever such special license or permit for immediate lading or unlading or for lading or unlading at night or on Sundays or holidays shall be granted to the collector of customs, who shall pay the same to the several customs officers and employees entitled thereto according to the rates fixed therefor by the Secretary of the Treasury: Provided, That such extra compensation shall be paid if such officers or employees have been ordered to report for duty and have so reported, whether the actual lading, unlading, receiving, delivery, or examination takes place or not. Customs officers acting as boarding officers and any customs officer who may be designated for that purpose by the collector of customs are hereby authorized to administer the oath or affirmation herein provided for, and such boarding officers shall be allowed extra compensation for services in boarding vessels at night or on Sundays or holidays at the rates prescribed by the Secretary of the Treasury as herein provided, the said extra compensation to be paid by the master, owner, agent, or consignee of such vessel: Provided further, That in those ports where customary working hours are other than those hereinabove mentioned, the Collector of Customs is vested with authority to regulate the hours of customs employees so as to agree with prevailing working hours in said ports but nothing contained in this proviso shall be construed in any manner to affect or alter the length of a working day for customs employees or the overtime pay herein fixed."

Said Act of Congress of February 7th, 1920 (41 Stat. L. 402), was made by reference a part of the Acts of Congress of June 17th, 1930 (Ch. 497, 46 Stat. L. 590) and known as the Tariff Act of 1930. The sections of said Tariff Act of 1930 applicable to plaintiff's claim are as follows:

"SEC. 450. UNLADING ON SUNDAYS, HOLIDAYS, OR AT NIGHT. No merchandise, baggage, or passengers arriving in the United States from any foreign port or place, and no bonded merchandise or baggage being transported from one port to another, shall be unladen from the carrying vessel or vehicle on Sunday,
36 a holiday or at night, except under special license granted by the collector under such regulations as the Secretary of the Treasury may prescribe" (46 Stat. L. 715).

"SEC. 451. SAME—EXTRA COMPENSATION. Before any such special license to unlade shall be granted, the master, owner, or agent of such vessel or vehicle shall be required to give a bond in the penal sum to be fixed by the collector conditioned to indemnify the United States for any loss or liability which might occur or be occasioned by reason of the granting of such special license and to pay the compensation and expenses of the customs officers and employees assigned to duty in connection with such unlading at night or on Sunday or a holiday, in accordance with the provisions of section 5 of the Act entitled 'An Act to provide for the lading or unlading of vessels at night, the preliminary entry of vessels, and for other purposes,' approved February 13, 1911, as amended. In lieu of such bond the owner, or agent, of any vessel or vehicle or line of vessels or vehicles may execute a bond in a penal sum to be fixed by the Secretary of the Treasury to cover and include the issuance of special licenses for the unlading of vessels or vehicles belonging to such line for a period of one year from the date thereof. At the request of the master, owner, or agent of any vessel, the collector shall assign customs officers and employees to duty at night or on Sunday or a holiday in connection with the entering or clearing of such vessel, or the issuing and recording of its marine documents, bills of sale, mortgages, or other instruments of title, but only if the master, owner, or agent gives a bond in a penal sum to be fixed by the collector, conditioned to pay the compensation and expenses of such customs officers and employees, who shall be entitled to rates of compensation fixed on the same basis and payable in the same manner and upon the same terms and conditions as in the case of customs officers and employees assigned to duty in connection with lading or unlading at night or on Sunday or a holiday" (46 Stat. L. 715).

37 Section 401 (46 Stat. L. 708) of said Tariff Act of 1930, defines the word vehicle as used in said act as follows:

"VEHICLE: The word 'vehicle' includes every description of carriage or other contrivance used, or capable of being used, as a means of transportation on land, but does not include aircraft."

(4) Such were the Acts of Congress that were in effect from September 1st, 1931 until August 31st, 1937, and during which time plaintiff performed the services for which extra compensation is herein sought and on which said Acts of Congress and T. D. 38290 hereinafter referred to, the claim of plaintiff is founded.

Regulations appertaining to said Acts of Congress, hereinbefore mentioned, were issued by the Bureau of Customs of the United States, Treasury Department and are contained in the Customs regulations of 1931 and the provisions thereof which are applicable to plaintiff's claim, are as follows, viz:

Article 1228, dealing with extra compensation. Article 1229, defining night and holiday. Article 1230, appertaining to rate of compensation. Article 1231, dealing with services performed on Sundays and holidays. Article 1446, dealing with official hours of certain Customs employees. Plaintiff's claim is also founded on said Customs regulations in so far, however, as they do not conflict with said Acts of Congress.

(5) In accordance with the provisions of said Act of Congress of February 7th, 1920 (41 Stat. L. 402), the Secretary of the Treasury fixed a reasonable rate of extra compensation for overtime services performed during night time, and on Sundays and holidays as required by said Act, and fixed said rate of compensation at the same rate as provided by said Act as aforesaid (T. D. 38290) and such order of the Secretary of the Treasury was effective during all of the period of time hereinafter set forth during which plaintiff performed the services for which compensation is herein sought.

38 (6) The extra compensation as so fixed by said Act of Congress of February 7th, 1920 (41 Stat. L. 402) was paid to the Customs inspectors and officers at the port of Detroit, Michigan, for the same kind of services as those for which compensation is herein sought and which were performed at night time and on Sundays and holidays until the opening of the Ambassador bridge, so-called, hereinafter mentioned, on or about November 15th, 1929.

(7) During the period of time commencing with September 1st, 1931, and ending August 31st, 1937, plaintiff was required by the collector of Customs at Detroit, Michigan, to and he did perform services as a Customs inspector at night time, being the hours between five o'clock postmeridian and eight o'clock antemeridian, and on Sundays and holidays at the port of Detroit, Michigan, at the following stations, viz: Detroit and Windsor Ferry; Walkerville Ferry; Detroit and Canada Tunnel; Ambassador bridge; Michigan Central Tunnel; Wabash Railway Ferries; Pere Mar-

quette Railway Ferries; Grand Trunk Railway Ferries, and which said services so performed by him, were in connection with the unlading, receiving and examination of passengers' baggage and the unlading of merchandise, baggage and passengers arriving in the United States from foreign ports or places at certain of said stations namely; Detroit and Windsor Ferry; Walkerville Ferry; Detroit and Canada Tunnel and Ambassador bridge and in connection with the unlading of merchandise arriving in the United States from foreign ports or places at certain of said stations, viz. Michigan Central Tunnel, Wabash Railway Ferry, Pere Marquette Railway Ferry and Grand Trunk Railway Ferry. Plaintiff has caused to be prepared an itemized statement showing the amount due him for such services performed by him based upon said rate of overtime pay and showing the amounts due to plaintiff for night and Sunday and holiday services so performed by him at each of said stations and during the periods of time within which said services were performed by him and which statement is annexed hereto and marked "Schedule A" and
39 made a part hereof. There is due to the plaintiff for said services the sum of $12,206.92 and there are no just credits or off-sets against said sum due plaintiff for said services and no part thereof has been paid.

(8) Said Detroit and Windsor Tunnel is a tube under the Detroit river connecting Detroit, Michigan, and Windsor, Ontario; Said Ambassador bridge is a bridge across the Detroit river connecting Detroit, Michigan, with Sandwich, Ontario. Ever since the opening of said tunnel and said bridge there has been over each of them respectively, a continuous flow of automobile and vehicular traffic including international bus service during twenty-fours of every day of the week, including Sundays and holidays. Said Ambassador bridge was open to traffic in the year 1929, and said tunnel was open to traffic in the year 1930. At about the time of the opening of said Ambassador bridge, the collector of Customs, or one of his deputies issued instructions that thereafter the customary working hours of Customs inspectors at the port of Detroit, would be any eight hour period of any twenty-four hours of any day during the week, including Sundays and holidays, and thereafter during the period of time covered by plaintiff's claim, plaintiff was not paid for the said services so performed by him at night time and on Sundays and holidays.

(9) The customary working hours at the port of Detroit, were then and now are from eight o'clock antemeridian until five o'clock postmeridian during week days, and such customary hours did not then nor do they now include Sundays or holidays, or night time services as defined by said Act, and the instructions so issued

by the said collector of Customs, or his deputy, were contrary to the provisions of said Act of Congress of February 7th, 1920 (41 Stat. L. 402).

(10) No action has been taken with respect to plaintiff's claim by Congress and no application has been made to Congress
40 for consideration of plaintiff's claim. The Customs inspectors at the port of the city of Detroit, Michigan, who performed similar night time, Sunday and holiday services, appointed an overtime committee to present the claims of plaintiff and other such Customs inspectors to the proper authorities and department. That committee filed with the collector of Customs, of Detroit, Michigan, a letter outlining their claims with a brief attached supporting their contention. At the request of the collector of Customs at Detroit, Michigan, said letter and brief were transmitted to the controller of United States and to the Commissioner of Customs, and to the Secretary of the Treasury. By letter bearing date of November 4th, 1936, to the collector of Customs at Detroit, Michigan, the Secretary of the Treasury declined to honor claims for such services.

(11) No assignment or transfer of plaintiff's claim or of any part thereof or interest therein has been made and no person other than the plaintiff is the owner thereof or interested therein.

(12) The plaintiff is justly entitled to recover from the United States for said services the said sum of $12,206.92 after allowing all just credits and set-offs.

(13) The said services performed by plaintiff in the month of September 1931, by custom established by the collector of Customs at Detroit, Michigan, were not due and payable until after October 1st, 1931.

(14) Plaintiff believes the facts as stated in this petition to be true.

Wherefore plaintiff prays judgment against the United States for the said sum of $12,206.92.

ROBERT M. DRYSDALE,
Attorney of Record for Plaintiff.

Business Address: 2213 Dime Bank Building, Detroit, Michigan.

41 [*Duly sworn to by Robert M. Drysdale; jurat omitted in printing.*]

Schedule A to petition

Inclusive dates From	To	Annual rate of pay	Per-cent off for econ-omy	Detroit and Windsor Ferry Night	Detroit and Windsor Ferry Sunday, holiday	Walkerville Ferry Night	Walkerville Ferry Sunday, holiday	Detroit and Canada Tunnel Night	Detroit and Canada Tunnel Sunday, holiday	Ambassador Bridge Night	Ambassador Bridge Sunday, holiday	M. C. R. R. Tunnel Night	M. C. R. R. Tunnel Sunday, holiday	Wabash Ferries (night)	P. M. Ry. Ferries (night)	G. T. Ry. Slip Dock (night)
9/1/31	10/16/32	$2,100	Full							$2,259.29	$513.04					
10/17/32	1/3/33	"	"											$233.32		
1/6/33	1/29/33	"	"											109.15		
1/30/33		"	"												811.05	
2/3/33	3/31/33	"	"												282.87	
4/25/33	5/10/33	"	15					$113.97	$19.82							
5/11/33		"	"											4.95		
5/12/33		"	"												2.48	
5/15/33	5/16/33	"	"											14.87		
5/17/33		"	"												9.91	
5/18/33		"	"											7.44		
5/22/33		"	"											7.44		
5/23/33	7/2/33	"	"												289.05	
7/3/33	8/13/33	"	"											183.43		
8/14/33		"	"												9.91	
8/16/33		"	"											7.44		
8/21/33	8/23/33	"	"											22.31		
8/24/33	8/26/33	"	"												14.87	
9/8/33	9/25/33	"	"	$54.51	$19.82										158.62	
9/26/33	10/22/33	"	"											9.91		
10/24/33		"	"												39.64	
10/25/33	10/28/33	"	"											9.91		
10/29/33		"	"												19.82	
10/30/33	10/31/33	"	"											7.44		
11/1/33	11/28/33	"	"			$116.43	$19.82									
11/29/33		"	"											14.87		
11/30/33	12/11/33	"	"			29.75	29.73									
12/29/33	1/17/34	"	"					39.64	39.64							
1/18/34	1/19/34	"	"												18.37	
1/20/34	1/31/34	"	"					109.02								
2/5/34	2/22/34	"	10					57.72	31.48							
2/23/34	2/25/34	"	"												349.02	
2/26/34	4/24/34	"	"					228.62	20.98					55.39		
5/14/34	6/30/34	"	"					259.07	52.47						22.15	
7/1/34	9/8/34	"	5					487.39	99.08					11.08		
9/9/34	10/31/34	"	"													
11/1/34	11/8/34	"	"													
11/9/34	11/10/34	"	"													
11/11/34		"	"													

| | | |

45 *VII. General traverse to the petition*

Filed November 8, 1937

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

(Sgd.) SAM. E. WHITAKER,
Assistant Attorney General.

OK J. F. S.

47 In the United States Court of Claims

No. 43674

WALTER O. PLITZ, PLAINTIFF,

vs.

THE UNITED STATES OF AMERICA, DEFENDANT

VIII. Amended petition

Filed August 20, 1941

To the Honorable the Chief Justice and Judges of the Court of Claims:

Plaintiff respectfully represents and shows:

(1) Plaintiff is a citizen of the United States and a resident of the State of Michigan, and has at all times borne true allegiance to the Government of the United States, and has not in way aided, abetted or given encouragement to rebellion against the United States.

48 (2) Prior to September 1st, 1931, plaintiff was duly appointed a Customs inspector at the port of the city of Detroit, and ever since then has held said position and now is such an inspector. His salary as such inspector during all of the period of time hereinafter set forth was fixed at $2,100.00 per year.

(3) The Acts of Congress of February 7th, 1920 (41 Stat. L. 402) being an amendment to Section 5 of the Act of Congress of February 13th, 1911, which provided for the lading or unlading of vessels at night provides, as follows:

"SEC. 5. That the Secretary of the Treasury shall fix a reasonable rate of extra compensation for overtime services of inspectors, storekeepers, weighers, and other customs officers and employees

who may be required to remain on duty between the hours of five o'clock postmeridian and eight o'clock antemeridian or on Sundays or holidays, to perform services in connection with the lading or unlading of cargo, or the lading of cargo or merchandise for transportation in bond or for exportation in bond or for exportation with benefit of drawback, or in connection with the receiving or delivery of cargo on or from the wharf, or in connection with the unlading, receiving, or examination of passengers' baggage, such rates to be fixed on the basis of one-half day's additional pay for each two hours or fraction thereof of at least one hour that the overtime extends beyond five o'clock postmeridian (but not to exceed two and one-half days' pay for the full period from five o'clock postmeridian to eight o'clock antemeridian), and two additional days' pay for Sunday or holiday duty. The said extra compensation shall be paid by the master, owner, agent, or consignee of such vessel or other conveyance, whenever such special license or permit for immediate lading or unlading or for lading or unlading at night or on Sundays or holidays shall be granted to the Collector of Customs, who shall pay the same to the
49 several customs officers and employees entitled thereto according to the rates fixed therefor by the Secretary of the Treasury: Provided, That such extra compensation shall be paid if such officers or employees have been ordered to report for duty and have so reported, whether the actual lading, unlading, receiving, delivery, or examination takes place or not. Customs officers acting as boarding officers and any customs officer who may be designated for that purpose by the collector of customs are hereby authorized to administer the oath or affirmation herein provided for, and such boarding officers shall be allowed extra compensation for services in boarding vessels at night or on Sundays or holidays at the rates prescribed by the Secretary of the Treasury as herein provided, the said extra compensation to be paid by the master, owner, agent, or consignee of such vessel: Provided further, That in those ports where customary working hours are other than those hereinabove mentioned, the Collector of Customs is vested with authority to regulate the hours of customs employees so as to agree with prevailing working hours in said ports, but nothing contained in this proviso shall be construed in any manner to affect or alter the length of a working day for customs employees or the overtime pay herein fixed."

Said Act of Congress of February 7th, 1920 (41 Stat. L. 402), was made by reference a part of the Acts of Congress of June 17th, 1930 (Ch. 497, 46 Stat. L. 590) and known as the Tariff Act of 1930. The sections of said Tariff Act of 1930 applicable to plaintiff's claim are as follows:

"SEC. 450. UNLADING ON SUNDAYS, HOLIDAYS, OR AT NIGHT.

No merchandise, baggage, or passengers arriving in the United States from any foreign port or place, and no bonded merchandise or baggage being transported from one port to another, shall be unladen from the carrying vessel or vehicle on Sunday, a holiday or at night, except under special license granted by the collector under such regulations as the Secretary of the Treasury may prescribe" (46 Stat. L. 715).

"SEC. 451. SAME—EXTRA COMPENSATION.

Before any such special license to unlade shall be granted, the master, owner, or agent, of such vessel or vehicle shall be required to give a bond in the penal sum to be fixed by the collector conditioned to idemnify the United States for any loss or liability which might occur or be occasioned by reason of the granting of such special license and to pay the compensation and expenses of the customs officers and employees assigned to duty in connection with such unlading at night or on Sunday or a holiday, in accordance with the provisions of section 5 of the Act entitled 'An Act to provide for the lading or unlading of vessels at night, the preliminary entry of vessels, and for other purposes,' approved February 13, 1911, as amended. In lieu of such bond the owner, or agent, of any vessel or vehicle or line of vessels or vehicles may execute a bond in a penal sum to be fixed by the Secretary of the Treasury to cover and include the issuance of special licenses for the unlading of vessels or vehicles belonging to such line for a period of one year from the date thereof. At the request of the master, owner, or agent of any vessel, the collector shall assign customs officers and employees to duty at night or on Sunday or a holiday in connection with the entering or clearing of such vessel, or the issuing and recording of its marine documents, bills of sale, mortgages, or other instruments of title, but only if the master, owner, or agent gives a bond in a penal sum to be fixed by the collector, conditioned to pay the compensation and expenses of such customs officers and employees, who shall be entitled to rates of compensation fixed on the same basis and payable in the same manner and upon the same terms and conditions as in the case of customs officers and employees assigned to duty in connection with lading or unlading at night or on Sunday or a holiday" (45 Stat. L. 715).

51 Section 401 (46 Stat. L. 708) of said Tariff Act of 1930, defines the word vehicle as used in said act as follows:

"VEHICLE: The word 'vehicle' includes every description of carriage or other contrivance used, or capable of being used, as a means of transportation on land, but does not include aircraft."

(4) Such were the Acts of Congress that were in effect from September 1st, 1931 until August 31st, 1937, and during which

time plaintiff performed the services for which extra compensation is herein sought and on which said Acts of Congress and T. D. 38290 hereinafter referred to, the claim of plaintiff is founded.

Regulations appertaining to said Acts of Congress, hereinbefore mentioned, were issued by the Bureau of Customs of the United States Treasury Department and are contained in the Customs regulations of 1931 and the provisions thereof which are applicable to plaintiff's claim, are as follows, viz;

Article 1228, dealing with extra compensation. Article 1229, defining night and holiday. Article 1230, appertaining to rate of compensation. Article 1231, dealing with services performed on Sundays and holidays. Article 1446, dealing with official hours of certain Customs employees. Plaintiff's claim is also founded on said Customs regulations in so far, however, as they do not conflict with said Acts of Congress.

(5) In accordance with the provisions of said Act of Congress of February 7th, 1920 (41 Stat. L. 402), the Secretary of the Treasury fixed a reasonable rate of extra compensation for overtime services performed during nighttime, and on Sundays and holidays as required by said Act, and fixed said rate of compensation at the same rate as provided by said Act as aforesaid (T. D. 38290) and such order of the Secretary of the Treasury was effective during all of the period of time hereinafter set forth during which plaintiff performed the services for which compensation is herein sought.

52 (6) The extra compensation as so fixed by said Act of Congress of February 7th, 1920 (41 Stat. L. 402) was paid to the Customs inspectors and officers at the port of Detroit, Michigan, for the same kind of services as those for which compensation is herein sought and which were performed at night time and on Sundays and holidays until the opening of the Ambassador bridge, so-called, hereinafter mentioned, on or about November 15th, 1929.

(7) During the period of time commencing with September 1st, 1931, and ending August 31st, 1937, plaintiff was required by the collector of Customs at Detroit, Michigan, to and he did perform services as a Customs inspector at night time, being the hours between five o'clock postmeridian and eight o'clock antemeridian, and on Sundays and holidays at the port of Detroit Michigan, at the following stations, viz: Detroit and Windsor Ferry; Walkerville Ferry; Detroit and Canada Tunnel; Ambassador bridge; Michigan Central Tunnel; Wabash Railway Ferries; Pere Marquette Railway Ferries; Grand Trunk Railway Ferries, and which said services so performed by him, were in connection with the unlading, receiving and examination of pas-

sengers' baggage and the unlading of merchandise, baggage and passengers arriving in the United States from foreign ports or places at certain of said stations namely; Detroit and Windsor Ferry; Walkerville Ferry; Detroit and Canada Tunnel and Ambassador bridge and in connection with the unlading of merchandise arriving in the United States from foreign ports or places at certain of said stations, viz, Michigan Central Tunnel, Wabash Railway Ferry, Pere Marquette Railway Ferry and Grand Trunk Railway Ferry. Plaintiff has caused to be prepared an itemized statement showing the amount due him for such services performed by him based upon said rate of overtime pay and showing the amounts due to plaintiff for night and Sunday and holiday services so performed by him at each of said stations and during the periods of time within which said services were performed by him and which statement is annexed hereto and marked
53 "Schedule A" and made a part hereof. There is due to the plaintiff for said services the sum of $12,227.94 and there are no just credits or off-sets against said sum due plaintiff for said services and no part thereof has been paid.

(8) Said Detroit and Windsor Tunnel is a tube under the Detroit river connecting Detroit, Michigan, and Windsor, Ontario. Said Ambassador bridge is a bridge across the Detroit river connecting Detroit, Michigan, with Sandwich, Ontario. Ever since the opening of said tunnel and said bridge there has been over each of them respectively, a continuous flow of automobile and vehicular traffic including international bus service during twenty-four hours of every day of the week, including Sundays and holidays.

Said Ambassador bridge was open to traffic in the year 1929, and said tunnel was open to traffic in the year 1930. At about the time of the opening of said Ambassador bridge, the collector of Customs, or one of his deputies issued instructions that thereafter the customary working hours of Customs inspectors at the port of Detroit, would be any eight hour period of any twenty-four hours of any day during the week, including Sundays and holidays, and thereafter during the period of time covered by plaintiff's claim, plaintiff was not paid for the said services so performed by him at night time and on Sundays and holidays.

(9) The customary working hours at the port of Detroit, were then and now are from eight o'clock antemeridian until five o'clock postmeridian during week days, and such customary hours did not then nor do they now include Sundays or holidays or night time services as defined by said Act, and the instructions so issued by the said collector of Customs, or his deputy, were contrary to the provisions of said Act of Congress of February 7th, 1920 (41 Stat. L. 402).

(10) No action has been taken with respect to plaintiff's claim by Congress and no application has been made to Congress
54 for consideration of plaintiff's claim. The Customs inspectors at the port of the city of Detroit, Michigan, who performed similar night time, Sunday and holiday services, appointed an overtime committee to present the claims of plaintiff and other such Customs inspectors to the proper authorities and department. That committee filed with the collector of Customs, of Detroit, Michigan, a letter outlining their claims with a brief attached supporting their contention. At the request of the collector of Customs at Detroit, Michigan, said letter and brief were transmitted to the controller of United States and to the Commissioner of Customs, and to the Secretary of the Treasury. By letter bearing date of November 4th, 1936, to the collector of Customs at Detroit, Michigan, the Secretary of the Treasury declined to honor claims for such services.

(11) No assignment or transfer of plaintiff's claim or of any part thereof or interest therein has been made and no person other than the plaintiff is the owner thereof or interested therein.

(12) The plaintiff is justly entitled to recover from the United States for said services the said sum of $12,277.94 after allowing all just credits and off-sets.

(13) The said services performed by plaintiff in the month of September 1931, by custom established by the collector of Customs at Detroit, Michigan, were not due and payable until after October 1st, 1931.

(14) Plaintiff believes the facts as stated in this petition to be true.

Wherefore plaintiff prays judgment against the United States for the said sum of $12,277.94.

ROBERT M. DRYSDALE,
Attorney of Record for Plaintiff.

Business Address: 1538 Dime Bank Building, Detroit, Michigan.

55 [Duly sworn to by Robert M. Drysdale; *jurat omitted in printing.*]

Exhibit A to amended petition

Inspector—WALTER O. PLITZ

Inclusive dates		Annual rate of pay	Percent off for economy	Detroit and Windsor Ferry		Walkerville Ferry		Detroit and Canada Tunnel		Ambassador Bridge		M. C. R. R. Tunnel		Wabash Ferries (night)	P. M. Ry. Ferries (night)
From—	To—			Night	Sunday, holiday	Night	Sunday, holiday	Night	Sunday, holiday	Night	Sunday, holiday	Night	Sunday, holiday		
9/1/31	10/14/31	$2,100		$204.15	$58.30										
10/16/31	2/29/32	2,100										$857.01	$163.24		
3/21/32	9/10/32	2,100								$1,061.08	$244.86				
10/1/32	3/31/33	2,100										967.78	104.84		
4/1/33	6/30/33	2,100	15									287.11	39.64		
8/8/33	1/19/34	2,100	15	679.02	138.74										
1/22/34	1/31/34	2,100	15							64.42	9.91				
2/1/34	3/10/34	2,100	10							199.39	31.49				
4/6/34	6/30/34	2,100	10					$203.53	$83.92						
7/1/34	11/30/34	2,100	5					928.23	177.28						
12/1/34	1/27/35	2,100	5												
Jan. and Feb. 1935		2,100	5												$274.23
February 1935		2,100	5											$132.95	
2/19/35	3/13/35	2,100													
4/6/35	10/28/35	2,100		988.40	198.22			171.40	11.08						11.08
10/29/35	1/20/36	2,100				$705.45									
Jan. and Feb. 1936		2,100													
Feb. and March 1936		2,100													198.22
4/5/36	7/18/36	2,100												46.66	
7/19/36	7/26/36	2,100		64.14	23.32			606.32	139.92						
7/27/36	9/15/36	2,100													
9/17/36	2/19/37	2,100												187.96	
3/10/37	3/22/37	2,100								399.38	198.22				
Mar. to Aug. 1937		2,100										139.92			
May to Aug. 1937		2,100								163.26	58.30				
															215.71

July to August 1937		2.100												
Total Sundays, holidays.				418.58				412.20		542.78		307.72	23.36	
Total Night			1,935.81		705.45		2,209.48		1,888.53		2,252.12		390.94	699.24

Total night	$10,081.57
Total Sunday and holiday	1,681.28
Total	$11,762.85
To equalize the amount due as per proofs	515.09
Grand total	$12,277.94

59 *IX. General traverse to the amended petition*

Filed Sept. 3, 1941.

And now comes the Attorney General, on behalf of the United States, and answering the amended petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the amended petition be dismissed.

(Sgd.) FRANCIS M. SHEA,
Assistant Attorney General.

OK J. F. S.
S. J. K.

61 In the United States Court of Claims

No. 43675

GEORGE H. SPITZ,
PLAINTIFF,

vs.

THE UNITED STATES OF AMERICA,
DEFENDANT

X. Amended petition

Filed August 20, 1941

To the Honorable the Chief Justice and Judges of the Court of Claims:

Plaintiff respectfully represents and shows:

(1). Plaintiff is a citizen of the United States and a resident of the State of Michigan, and has at all times borne true allegiance to the Government of the United States; and has not in any way aided, abetted or given encouragement to rebellion against the United States.

62 (2) Prior to September 1st, 1931, plaintiff was duly appointed a Customs inspector at the port of the city of Detroit, and ever since then has held said position and now is such an inspector. His salary as such inspector during all of the period of time hereinafter set forth was fixed at $2,100.00 per year.

(3) The Acts of Congress of February 7th, 1920 (41 Stat. L. 402) being an amendment to Section 5 of the Act of Congress of February 13th, 1911, which provided for the lading or unlading of vessels at night provides, as follows:

"SEC. 5. That the Secretary of the Treasury shall fix a reasonable rate of extra compensation for overtime services of inspectors, storekeepers, weighers, and other customs officers and employees who may be required to remain on duty between the hours of five o'clock postmeridian and eight o'clock antemeridian or on Sundays or holidays, to perform services in connection with the lading or unlading of cargo, or the lading of cargo or merchandise for transportation in bond or for exportation in bond or for exportation with benefit of drawback, or in connection with the receiving or delivery of cargo on or from the wharf, or in connection with the unlading, receiving, or examination of passengers' baggage, such rates to be fixed on the basis of one-half day's additional pay for each two hours or fraction thereof of at least one hour that the overtime extends beyond five o'clock postmeridian (but not to exceed two and one-half days' pay for the full period from five o'clock postmeridian to eight o'clock antemeridian), and two additional days' pay for Sunday or holiday duty. The said extra compensation shall be paid by the master, owner, agent, or consignee of such vessel or other conveyance whenever such special license or permit for immediate lading or unlading or for lading or unlading at night or on Sundays or holidays shall be granted to the collector of customs, who shall pay the same to the
63 several customs officers and employees entitled thereto according to the rates fixed therefor by the Secretary of the Treasury: Provided, That such extra compensation shall be paid if such officers or employees have been ordered to report for duty and have so reported, whether the actual lading, unlading, receiving, delivery, or examination takes place or not. Customs officers acting as boarding officers and any customs officer who may be designated for that purpose by the collector of customs are hereby authorized to administer the oath or affirmation herein provided for, and such boarding officers shall be allowed extra compensation for services in boarding vessels at night or on Sundays or holidays at the rate prescribed by the Secretary of the Treasury as herein provided, the said extra compensation to be paid by the master, owner, agent, or consignee of such vessel: Provided further, That in those ports where customary working hours are other than those hereinabove mentioned, the Collector of Customs is vested with authority to regulate the hours of customs employees so as to agree with prevailing working hours in said ports, but nothing contained in this proviso shall be construed in any manner to affect or alter the length of a working day for customs employees or the overtime pay herein fixed."

Said Act of Congress of February 7th, 1920 (41 Stat. L. 402), was made by reference a part of the Acts of Congress of June

17th, 1930 (Ch. 497, 46 Stat. L. 590) and known as the Tariff Act of 1930. The sections of said Tariff Act of 1930 applicable to plaintiff's claim as are follows:

"SEC. 450. UNLADING ON SUNDAYS, HOLIDAYS, OR AT NIGHT.

No merchandise, baggage, or passengers arriving in the United States from any foreign port or place, and no bonded merchandise or baggage being transported from one port to another, shall be unladen from the carrying vessel or vehicle on Sunday, a
64 holiday or at night, except under special license granted by the collector under such regulations as the Secretary of the Treasury may prescribe" (46 Stat. L. 715).

"SEC. 451. EXTRA COMPENSATION.

Before any such special license to unlade shall be granted, the master, owner, or agent, of such vessel or vehicle shall be required to give a bond in the penal sum to be fixed by the collector conditioned to idemnify the United States for any loss or liability which might occur or be occasioned by reason of the granting of such special license and to pay the compensation and expenses of the customs officers and employees assigned to duty in connection with such unlading at night or on Sunday or a holiday, in accordance with the provisions of section 5 of the Act entitled 'An Act to provide for the lading or unlading of vessels at night, the preliminary entry of vessels, and for other purposes,' approved February 13, 1911, as amended. In lieu of such bond the owner, or agent, of any vessel or vehicle or line of vessels or vehicles may execute a bond in a penal sum to be fixed by the Secretary of the Treasury to cover and include the issuance of special licenses for the unlading of vessels or vehicles belonging to such line for a period of one year from the date thereof. At the request of the master, owner, or agent of any vessel, the collector shall assign customs officers and employees to duty at night or on Sunday or a holiday in connection with the entering or clearing of such vessel, or the issuing and recording of its marine documents, bills of sale, mortgages, or other instruments of title, but only if the master, owner, or agent gives a bond in a penal sum to be fixed by the collector, conditioned to pay the compensation and expenses of such customs officers and employees, who shall be entitled to rates of compensation fixed on the same basis and payable in the same manner and upon the same terms and conditions as in the case of customs officers and employees assigned to duty in connection with lading or unlading at night or on Sunday or a holiday" (46 Stat. L. 715).

65 Section 401 (46 Stat. L. 708) of said Tariff Act of 1930, defines the word vehicle as used in said act as follows:

"VEHICLE: The word 'vehicle' includes every description of carriage or other contrivance used, or capable of being used, as a means of transportation on land, but does not include aircraft."

(4) Such were the Acts of Congress that were in effect from September 1st, 1931 until August 31st, 1937, and during which time plaintiff performed the services for which extra compensation is herein sought and on which said Acts of Congress and T. D. 38290 hereinafter referred to, the claim of plaintiff is founded.

Regulations appertaining to said Acts of Congress, hereinbefore mentioned, were issued by the Bureau of Customs of the United States Treasury Department and are contained in the Customs regulations of 1931 and the provisions thereof which are applicable to plaintiff's claim, are as follows, viz:

Article 1228, dealing with extra compensation. Article 1229, defining night and holiday. Article 1230, appertaining to rate of compensation. Article 1231, dealing with services performed on Sundays and holidays. Article 1446, dealing with official hours of certain Customs employees. Plaintiff's claim is also founded on said Customs regulations in so far, however, as they do not conflict with said Acts of Congress.

(5) In accordance with the provisions of said Act of Congress of February 7th, 1920 (41 Stat. L. 402), the Secretary of the Treasury fixed a reasonable rate of extra compensation for overtime services performed during night time, and on Sundays and holidays as required by said Act, and fixed said rate of compensation at the same rate as provided by said Act as aforesaid (T. D. 38290) and such order of the Secretary of the Treasury was effective during all of the period of time hereinafter set forth during which plaintiff performed the services for which compensation is herein sought.

66 (6) The extra compensation as so fixed by said Act of Congress of February 7th, 1920 (41 Stat. L. 402) was paid to the Customs inspectors and officers at the port of Detroit, Michigan, for the same kind of services as those for which compensation is herein sought and which were performed at night time and on Sundays and holidays until the opening of the Ambassador bridge, so-called, hereinafter mentioned, on or about November 15th, 1929.

(7) During the period of time commencing with September 1st, 1931, and ending August 31st, 1937, plaintiff was required by the collector of Customs at Detroit, Michigan, to and he did per-

form services as a Customs inspector at night time, being the hours between five o'clock postmeridian and eight o'clock antemeridian, and on Sundays and holidays at the port of Detroit, Michigan, at the following stations, viz: Detroit and Windsor Ferry; Walkerville Ferry; Detroit and Canada Tunnel; Ambassador bridge; Michigan Central Tunnel; Wabash Railway Ferries; Pere Marquette Railway Ferries; Grand Trunk Railway Ferries, and which said services so performed by him, were in connection with the unlading, receiving and examination of passengers' baggage and the unlading of merchandise, baggage and passengers arriving in the United States from foreign ports or places at certain of said stations, namely: Detroit and Windsor Ferry; Walkerville Ferry; Detroit and Canada Tunnel and Ambassador bridge and in connection with the unloading of merchandise arriving in the United States from foreign ports or places at certain of said stations, viz, Michigan Central Tunnel, Wabash Railway Ferry, Pere Marquette Railway Ferry and Grand Trunk Railway Ferry. Plaintiff has caused to be prepared an itemized statement showing the amount due him for such services performed by him based upon said rate of overtime pay and showing the amounts due to plaintiff for night and Sunday and holiday services so performed by him at each of said stations and during the periods of time within which said services were performed by him and which statement is annexed hereto and marked "Schedule A" and made a

67 part hereof. There is due to the plaintiff for said services the sum of $10,267.68 and there are no just credits or off-sets against said sum due plaintiff for said services and no part thereof has been paid.

(8) Said Detroit and Windsor Tunnel is a tube under the Detroit river connecting Detroit, Michigan, and Windsor, Ontario. Said Ambassador bridge is a bridge across the Detroit river connecting Detroit, Michigan, with Sandwich, Ontario. Ever since the opening of said tunnel and said bridge there has been over each of them respectively, a continuous flow of automobile and vehicular traffic including international bus service during twenty-four hours of every day of the week, including Sundays and holidays.

Said Ambassador bridge was open to traffic in the year 1929, and said tunnel was open to traffic in the year 1930. At about the time of the opening of said Ambassador bridge, the collector of Customs, or one of his deputies issued instructions that thereafter the customary working hours of Customs inspectors at the port of Detroit, would be any eight hour period of any twenty-four hours of any day during the week, including Sundays and holidays, and thereafter during the period of time covered by plaintiff's claim,

plaintiff was not paid for the said services so performed by him at night time and on Sundays and holidays.

(9) The customary working hours at the port of Detroit were then and now are from eight o'clock antemeridian until five o'clock postmeridian during week days, and such customary hours did not then nor do they now include Sundays or holidays or night time services as defined by said Act, and the instructions so issued by the said collector of Customs, or his deputy, were contrary to the provisions of said Act of Congress of February 7th, 1920 (41 Stat. L. 402).

(10) No action has been taken with respect to plaintiff's claim by Congress and no application has been made to Congress
68 for consideration of plaintiff's claim. The Customs inspectors at the port of the city of Detroit, Michigan, who performed similar night time, Sunday and holiday services, appointed an overtime committee to present the claims of plaintiff and other such Customs inspectors to the proper authorities and department. That committee filed with the collector of Customs, of Detroit, Michigan, a letter outlining their claims with a brief attached supporting their contention. At the request of the collector of Customs at Detroit, Michigan, said letter and brief were transmitted to the controller of United States and to the Commissioner of Customs, and to the Secretary of the Treasury. By letter bearing date of November 4th, 1936, to the collector of Customs at Detroit, Michigan, the Secretary of the Treasury declined to honor claims for such services.

(11) No assignment or transfer of plaintiff's claim or of any part thereof or interest therein has been made and no person other than the plaintiff is the owner thereof or interested therein.

(12) The plaintiff is justly entitled to recover from the United States for said services the said sum of $10,267.68 after allowing all just credits and off-sets.

(13) The said services performed by plaintiff in the month of September 1931, by custom established by the collector of Customs at Detroit, Michigan, were not due and payable until after October 1st, 1931.

(14) Plaintiff believes the facts as stated in this petition to be true.

Wherefore plaintiff prays judgment against the United States for the said sum of $10,267.68.

ROBERT M. DRYSDALE,
Attorney of Record for Plaintiff.

Business Address: 1538 Dime Bank Building, Detroit, Michigan.

69 [*Duly sworn to by Robert M. Drysdale; jurat omitted in printing.*]

Exhibit A to amended petition

Inspector—GEORGE H. SPITZ

Inclusive dates		Annual rate of pay	Percent off for economy	Detroit and Windsor Ferry		Walkerville Ferry		Detroit and Canada Tunnel		Ambassador Bridge		M. C. R. R. Tunnel		Wabash Ferries (night)	P. M. Ry. Ferries (night)
From	To—			Night	Sunday, holiday	Night	Sunday, holiday	Night	Sunday, holiday	Night	Sunday, holiday	Night	Sunday, holiday		
12/1/33	3/31/33	$2,100						$728.75	$116.60						
4/1/33	5/2/33	"	15					128.85	19.82						
5/3/33	6/25/33	"	15									$297.32	$59.46		
6/26/33	8/6/33	"	15	$200.69	$29.73										
8/3/33	8/5/33	"	15												$9.91
8/7/33	12/13/33	"	15											$509.84	
October 1933		"	15												12.39
12/29/33	1/31/34	"	15									178.39	29.73		
2/1/34	6/30/34	"	10									923.45	83.96		
7/1/34	11/30/34	"	5									653.53	96.67		
12/31/34	2/27/35	"	5					290.31	77.54						
2/28/35	3/31/35	"	5											177.29	
4/1/35	6/19/35	"												446.06	
May 1935		"													11.66
6/26/35	7/9/35	"		128.26											
8/17/35	9/24/35	"										244.86	64.46		
10/14/35	11/26/35	"						314.82	69.96						
1/2/36	4/22/36	"										1,025.08	116.60		
4/24/36	5/24/36	"						198.22	34.98						
5/25/36	7/18/36	"		250.74	81.62										
1/1/37	6/26/37	"								$361.50	$209.88				
July and August 1937		"													104.94
July and August 1937		"												172.06	
Total Sundays, holidays.					111.35				318.90		209.88		450.88		
Total night				579.69				1,630.95		361.50		3,323.63		1,395.25	138.90

Total Sunday and holiday amounts	$1,091.01
Total night amounts	7,429.92
Total	8,520.93
To equalize the amount due as per proofs	1,746.75
Grand total	$10,267.68

73 *XI. General traverse to the amended petition*

Filed Sept. 3, 1941

And now comes the Attorney General, on behalf of the United States, and answering the amended petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the amended petition be dismissed.

(Sgd.) FRANCIS M. SHEA,
Assistant Attorney General.

OK J. F. S.
S. J. K.

XII. Final argument and submission of cases

On December 8, 1942, the argument and submission of cases on merits was begun by Mr. R. M. Drysdale for plaintiffs.

On December 9, 1942, the argument and submission of cases on merits was concluded by Mr. R. M. Drysdale for plaintiffs, and by Mr. J. Frank Staley for defendant.

75 *XIII. Special findings of fact, conclusion of law, opinion of the court by Whaley, Ch. J., and concurring opinion in part and dissenting opinion in part by Madden, J.:*

Filed February 1, 1943

Mr. Robert M. Drysdale for the plaintiffs.

Mr. J. Frank Staley, with whom was Mr. Assistant Attorney General Francis M. Shea, for the defendant. Mr. Sidney J. Kaplan was on the briefs.

These cases having been heard by the Court of Claims, the court, upon the evidence, and the report of a commissioner, makes the following:

76 *Special findings of fact*

1. Each of the plaintiffs is a citizen of the United States and resident of the State of Michigan.

2. Each of the plaintiffs was a customs inspector at the port of Detroit September 1, 1931, to August 31, 1937, during which period the base salary of an inspector was $2,100 per annum, which, except as diminished by the Economy Act of June 30, 1932, 47 Stat. 382, he has received.

3. At the port of Detroit, there were at all times herein involved the following stations where customs inspectors rendered services with respect to goods, merchandise, passengers and bag-

gage arriving and departing on, over, or under the Detroit River, to wit:

Detroit and Windsor Ferry
Walkerville Ferry
Detroit and Canada Tunnel
Ambassador Bridge
Michigan Central Tunnel
Wabash Railway Ferries
Pere Marquette Railway Ferries
Grand Trunk Railway Slip Dock

At all times herein involved the Detroit and Windsor Ferry was an international line of ferry boats operating between Windsor, Ontario, Canada, and Detroit, Michigan, continuously from 5 a. m. until 2 a. m. of the following day. Services rendered by customs inspectors at this station consisted of inspection of pedestrians and vehicular traffic, commercial busses, and commercial importations arriving from Canada; inspection of merchandise brought in by pedestrians, automobile or truck, including passengers' baggage; examination of goods entering in bond for transportation through the United States and of goods for exportation to foreign countries, with benefit of drawback or otherwise.

The Walkerville Ferry was an international line of ferry boats operating daily from 5:30 a. m. to 2 a. m. of the following day between Walkerville, Ontario, and the port of Detroit. Inspectors performed services at this station identical with those performed at the Detroit and Windsor Ferry station with the exception that no commercial busses crossed on the Walkerville Ferry boats.

77 The Detroit and Canada Tunnel, opened to traffic November 3, 1930, was a tube under the Detroit River connecting Windsor and Detroit, through which passed vehicular traffic carrying passengers and merchandise. Services by inspectors included all those performed at the Walkerville Ferry station and in addition thereto inspection of passengers and their baggage carried by a line of commercial busses operated through the tunnel by the Detroit and Canada Tunnel Company. The tunnel never closed and traffic through it was continuous twenty-four hours per day.

The Ambassador Bridge, opened to traffic November 15, 1929, was a bridge over the Detroit River, connecting Sandwich, Ontario, and Detroit. Traffic was continuous for twenty-four hours per day and included foot passengers, vehicular traffic, commercial trucks and busses. Services performed by customs inspectors were identical with those performed at the Detroit and Windsor Ferry station.

performed on Sundays or holidays. The inspectors had an eight-hour day and a 56-hour week.

This practice, however, did not wholly prevail at the Michigan Central Railway, where for certain periods prior to November 15, 1929, excess pay was not allowed for daytime service on Sundays or holidays.

6. Upon the opening of the Ambassador Bridge November 15, 1929, there was a change in practice at the port of Detroit.

At the Detroit and Windsor Ferry, the Walkerville Ferry, the Detroit and Canada Tunnel, the Ambassador Bridge, and the freight yard of the Michigan Central Railway, the customs inspectors were given an eight-hour day and a 48-hour week.

Excess pay was discontinued for daytime service performed
79 on Sundays or holidays, within the 48-hour week. No excess pay was given for nighttime service performed Sundays, holidays, or weekdays, within the 48-hour week.

At the Michigan Central Railway passenger station and the Wabash Railway and Pere Marquette Railway ferries, and the Grand Trunk Railway Slip Dock the hours continued as before, with an eight-hour day and a 56-hour week. Excess pay was continued at these last four places for daytime service performed on Sundays and holidays, even though within the 56-hour limit, but no excess pay was given for nighttime service there on Sundays, holidays, or weekdays, performed within the 56-hour period.

After March 3, 1931, the date of going into effect of the Saturday half-holiday for Federal employees, the hours of employment per week were reduced to 44 at the Detroit and Windsor Ferry, the Walkerville Ferry, the Detroit and Canada Tunnel, the Ambassador Bridge and the freight yard of the Michigan Central Railway, and to 52 hours per week at the passenger station of the Michigan Central Railway, at the Wabash Railway and Pere Marquette Railway ferries, and at the Grand Trunk Railway Slip Dock, with conditions of excess pay as before but within and based upon the new period of 44 hours. Pay in excess of their annual salaries was given to inspectors for time served in excess of 44 hours per week at the passenger station of the Michigan Central Railway, at the Wabash Railway and Pere Marquette Railway ferries and at the Grand Trunk Railway Slip Dock notwithstanding the 52-hour week.

During the period for which claims are being made, viz, September 1, 1931, to August 31, 1937, excess pay given to the inspectors had first been collected by the Collector of Customs from the carrier concerned, and by the Collector remitted to the inspectors by check on the fund so collected. The carriers, so collected from, filed bond securing such collections, under a permit

which was given to them by the Collector on application for the service desired.

Whether and in what amount under the bond and permit system moneys should be collected from the carrier concerned
80 for the payment of compensation to the inspectors was determined by their official superiors, and was not within the control of the inspectors.

7. Plaintiffs' claims are confined (1) to service performed at nighttime on weekdays, Sundays, and holidays, and (2) to service performed in the daytime on Sundays and holidays, in both instances within a regular tour of duty of 44 hours per week.

All service was performed in line of duty, as assigned and directed by their superiors, and all payments of excess pay were made on vouchers prepared at the direction of the inspectors' superiors in office and given to the inspectors for them to sign before payment.

8. Howard C. Myers, No. 43671.—Plaintiff Howard C. Myers was appointed inspector in the customs service May 28, 1930, and for the period September 1, 1931, to August 31, 1937, performed certain services at the Detroit port in daytime on Sundays or holidays, or at nighttime on Sundays, holidays, or weekdays that were not in excess of 44 hours per week. Excess pay for such services calculated under section 5 of the act of February 13, 1911, 36 Stat. 901, as amended, construed as allowing the named rates as additions to the annual base salary of $2,100 is $13,759.41, which the plaintiff claims and has not been paid. The annual base salary, apportioned to the daytime of weekdays wherein plaintiff did not work because of such work in daytime on Sundays or holidays or at nighttime on Sundays, holidays, or weekdays, is $6,469.93, which the defendant asserts as recoverable from the plaintiff in the event that plaintiff is adjudged entitled to recover of the defendant pay of $13,759.41.

During the period of this claim, viz. September 1, 1931, to August 31, 1937, the plaintiff also performed service in excess of 44 hours per week at the Wabash Railway and Pere Marquette Railway ferries, for which he received $691.76 excess pay.

The regular tour of duty at these stations was 52 hours per week. The excess over 44 hours was paid for by the port Collector of Customs from funds collected by him for that purpose from the carriers concerned.

This item of $691.76 is not sued for herein.

81 9. John H. Arble, No. 43672.—Plaintiff John H. Arble received appointment in the customs service July 1, 1930, and during the period September 1, 1931, to August 31, 1937, performed certain services at the port of Detroit in daytime on Sundays or holidays, or at nighttime on Sundays, holidays, or week-

days, that were not in excess of 44 hours per week. Excess pay for such services calculated under section 5 of the act of February 13, 1911, 36 Stat. 901, as amended, construed as allowing the named rates as additions to the annual base salary of $2,100, is $10,219.23, which plaintiff claims and has not been paid. The annual base salary, apportioned to the daytime of weekdays, wherein plaintiff did not work because of such work in daytime on Sundays or holidays or at nighttime on Sundays, holidays, or weekdays, is $1,972.76, which the defendant asserts as recoverable from the plaintiff in the event that plaintiff is adjudged entitled to recover of the defendant pay of $10,219.23.

During the period of this claim, viz, September 1, 1931, to August 31, 1937, the plaintiff also performed services in excess of 44 hours per week at the Grand Trunk Railway Slip Dock for which he received $124.20 excess pay.

The regular tour of duty at this dock was 52 hours per week. The excess over 44 hours was paid for by the port Collector of Customs from funds collected by him for that purpose from the Grand Trunk Railway.

This item of $124.20 is not sued for herein.

10. Charles C. Martin, No. 43673.—Plaintiff Charles C. Martin received appointment into the customs service November 4, 1929, and during the period September 1, 1931, to August 31, 1937, performed certain services at the port of Detroit in daytime on Sundays or holidays or at nighttime on Sundays, holidays, or weekdays that were not in excess of 44 hours per week. Excess pay for such services calculated under section 5 of the act of February 13, 1911, 36 Stat. 901, as amended, construed as allowing the named rates as additions to the annual base salary of $2,100, is $12,225.32, which the plaintiff claims and has not been paid. The annual base salary, apportioned to the daytime of weekdays wherein
82 plaintiff did not work because of such work in daytime on Sundays or holidays or at nighttime on Sundays, holidays, or weekdays, is $5,650.44, which the defendant asserts as recoverable from the plaintiff in the event that plaintiff is adjudged entitled to recover of the defendant pay of $12,225.32.

During the period of this claim, viz, September 1, 1931, to August 31, 1937, the plaintiff also performed services in excess of 44 hours per week at the Wabash Railway and Pere Marquette Railway ferries and the Grand Trunk Railway Slip Dock for which he received $888.50 excess pay.

The regular tour of duty at the Wabash Railway and Pere Marquette Railway ferries and at the Grand Trunk Railway Slip Dock was 52 hours per week. The excess over 44 hours was paid for by the port Collector of Customs from funds collected by him

for that purpose from the Wabash Railway, Pere Marquette Railway, and Grand Trunk Railway.

This item of $888.50 is not sued for herein.

During the period of this claim plaintiff Charles C. Martin also performed services in excess of 44 hours per week at the Detroit and Windsor Ferry for which he received $45.77 excess pay.

The regular tour of duty at this station was 44 hours per week. The excess over 44 hours was paid for by the port Collector of Customs from funds collected by him for that purpose from the Detroit and Windsor Ferry.

This item of $45.77 is not sued for herein.

11. Walter O. Plitz, No. 43674.—Plaintiff Walter O. Plitz received appointment into the customs service October 20, 1930, and during the period September 1; 1931, to August 31, 1937, performed certain services at the port of Detroit in daytime on Sundays or holidays or at nighttime on Sundays, holidays, or weekdays, that were not in excess of 44 hours per week. Excess pay for such services calculated under section 5 of the act of February 13, 1911, 36 Stat. 901, as amended, construed as allowing the named rates as additions to the annual base salary of $2,100; is $12,277.94, which plaintiff claims and has not been paid. The annual base salary, apportioned to the daytime of weekdays wherein plaintiff did not work because of such work in daytime on Sundays or holidays or at nighttime on Sundays, holi-
83 days, or weekdays, is $5,833.55, which the defendant asserts as recoverable from the plaintiff in the event that plaintiff is adjudged entitled to recover of the defendant pay of $12,277.94.

During the period of this claim, viz, September 1, 1931, to August 31, 1937, the plaintiff also performed services in excess of 44 hours per week at the Pere Marquette Railway and Wabash Railway ferries, for which he received $442.78 excess pay.

The regular tour of duty at the Pere Marquette Railway and Wabash Railway ferries was 52 hours per week. The excess over 44 hours was paid for by the port Collector of Customs from funds collected by him for that purpose from the Pere Marquette Railway and the Wabash Railway.

This item of $442.78 is not sued for herein.

12. George H. Spitz, No. 43675.—Plaintiff George H. Spitz received his appointment into the customs service in November of 1929 and during the period September 1, 1931, to August 31, 1937, performed certain services at the port of Detroit in daytime on Sundays or holidays or at nighttime on Sundays, holidays, or weekdays, that were not in excess of 44 hours per week. Excess pay for such services calculated under section 5 of the act of February 13, 1911, 36 Stat. 901, as amended, construed as allowing the named rates as additions to the annual base salary of $2,100,

is $10,267.68, which plaintiff claims and has not been paid. The annual base salary, apportioned to the daytime of weekdays wherein plaintiff did not work because of such work in daytime on Sundays, holidays, or at nighttime on Sundays, holidays, or weekdays, is $4,759.52, which the defendant asserts as recoverable from the plaintiff in the event that plaintiff is adjudged entitled to recover of the defendant pay of $10,267.68.

During the period of this claim, viz, September 1, 1931, to August 31, 1937, the plaintiff also performed services in excess of 44 hours per week at the Wabash Railway and Pere Marquette Railway ferries, for which he received $399.13 excess pay.

The regular tour of duty at the Wabash Railway and Pere Marquette Railway ferries was 52 hours per week. The
84 excess over 44 hours was paid for by the port Collector of Customs from funds collected by him for that purpose from the Pere Marquette Railway and Wabash Railway.

This item of $399.13 is not sued for herein.

During the period of this claim plaintiff also performed services in excess of 44 hours per week at the Michigan Central Railway Freight Yard or Passenger Station, for which he received $346.92 excess pay.

The regular tour of duty at the freight yard was 44 hours per week, at the passenger station 52 hours per week. It does not appear how the services were divided, if at all, between these two places. The excess over 44 hours was paid for by the port Collector of Customs from funds collected by him for that purpose from the Michigan Central Railway.

This item of $346.92 is not sued for herein.

13. The amounts sued for herein by the respective plaintiffs have not been collected in whole or in part from the several carriers concerned by plaintiffs or defendant.

Conclusion of law

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court decides, as a conclusion of law, that plaintiff Howard C. Myers is entitled to recover $13,759.41; plaintiff John H. Arble is entitled to recover $10,219.23; plaintiff Charles C. Martin is entitled to recover $12,225.32; plaintiff Walter O. Plitz is entitled to recover $12,277.94; and plaintiff George H. Spitz is entitled to recover $10,267.68.

It is therefore adjudged and ordered that plaintiff Howard C. Myers recover of and from the United States the sum of thirteen thousand seven hundred fifty-nine dollars and forty-one cents ($13,759.41); plaintiff John H. Arble recover of and from the United States the sum of ten thousand two hundred nineteen dollars and twenty-three cents ($10,219.23); plaintiff Charles C.

Martin recover of and from the United States the sum of twelve thousand two hundred twenty-five dollars and thirty-two cents ($12,225.32); plaintiff Walter O. Plitz recover of and from the United States twelve thousand two hundred seventy-seven
85 dollars and ninety-four cents ($12,277.94); and plaintiff George H. Spitz recover of and from the United States the sum of ten thousand two hundred sixty-seven dollars and sixty-eight cents ($10,267.68).

Opinion

WHALEY, *Chief Justice*, delivered the opinion of the court:

The sole question in these cases is the liability of the United States for extra compensation for services rendered at night, on Sundays or holidays by customs inspectors at the port of Detroit, Michigan. No claim is made for extra pay for any work other than the regular tours of service of eight hours during the twenty-four hours of any day. The parties have stipulated that the five cases in suit (Nos. 43671, 43672, 43673, 43674, and 43675] shall serve as test cases for the determination of twenty-two other suits by customs inspectors at the port of Detroit to recover extra compensation.

Plaintiffs' claims are based on section 5 of the act of February 13, 1911, 36 Stat. 901, as amended by the act of February 7, 1920, 41 Stat. 402, and sections 450, 451, 452, and 401 of the Tariff Act of 1930, 46 Stat. 590.

The solution of the question involves an interpretation of the section of the Act of 1911, as amended, which reads as follows:

"SEC. 5. That the Secretary of the Treasury shall fix a reasonable rate of extra compensation for overtime services of inspectors, storekeepers, weighers, and other customs officers and employees who may be required to remain on duty between the hours of five o'clock postmeridian and eight o'clock antemeridian, or on Sundays or holidays, to perform services in connection with the lading or unlading of cargo, or the lading of cargo or merchandise for transportation in bond or for exportation in bond or for exportation with benefit of drawback, or in connection with the receiving or delivery of cargo on or from the wharf, or in connection with the unlading, receiving, or examination of passengers' baggage, such rates to be fixed on the basis of one-half day's additional pay for each two hours or fraction thereof of at least one hour that the overtime extends beyond five o'clock postmeridian (but not to exceed two and one-half days' pay for the full period from five o'clock postmeridian to eight o'clock antemeridian), and two additional days' pay for
86 Sunday or holiday duty. The said extra compensation

shall be paid by the master, owner, agent, or consignee of such vessel or other conveyance whenever such special license or permit for immediate lading or unlading or for lading or unlading at night or on Sundays or holidays shall be granted to the collector of customs, who shall pay the same to the several customs officers and employees entitled thereto according to the rates fixed therefor by the Secretary of the Treasury: Provided, That such extra compensation shall be paid if such officers or employees have been ordered to report for duty and have so reported, whether the actual lading, unlading, receiving, delivery, or examination takes place or not. Customs officers acting as boarding officers and any customs officer who may be designated for that purpose by the collector of customs are hereby authorized to administer the oath or affirmation herein provided for, and such boarding officers shall be allowed extra compensation for services in boarding vessels at night or on Sundays or holidays at the rates prescribed by the Secretary of the Treasury as herein provided; the said extra compensation to be paid by the master, owner, agent, or consignee of such vessel: Provided further, That in those ports when customary working hours are other than those hereinabove mentioned, the Collector of Customs is vested with authority to regulate the hours of customs employees so as to agree with prevailing working hours in said ports, but nothing contained in this proviso shall be construed in any manner to affect or alter the length of a working day for customs employees on the overtime pay herein fixed."

The plaintiffs performed services at night, or on Sundays or holidays, at the port of Detroit where goods, merchandise, passengers, and baggage arrived from or entered Canada on, over, and under the Detroit River by way of ferries, tunnels, and a bridge.

Extra compensation is claimed for night services at all stations and for Sunday or holiday services at the ferries, tunnels, and bridge.

At one of the tunnels extra compensation was paid for Sunday or holiday services. Plaintiffs performed at all the stations herein involved services at night, or on Sundays or holidays, in connection with the lading and unlading of cargo or the lading of cargo or mercandise for transportation in bond, or for exportation in bond or for exportation with benefit of draw-
87 back, or in connection with the receiving or delivery of cargo on or from the wharf, or in connection with the unlading, receiving, or examinatinn of passengers' baggage. Only eight-hour periods of the twenty-four hours of any day, including Sundays or holidays, were performed. There is no claim made for any excess of time over eight hours.

Before November 15, 1929, when the Ambassador Bridge was opened, customs officers and employees at the port of Detroit were paid at all stations extra compensation for Sunday or holiday services. After the opening of the Bridge the collector of customs stopped payment of extra compensation for Sunday or holiday services at the ferries and tunnels and substituted therefor the practice of giving compensatory time off at a later date. No extra compensation for Sunday or holiday duty was made at the Ambassador Bridge or the Detroit and Canada Tunnel but compensatory time off was granted.

There is no difference between a ferry, a bridge, and a tunnel as a means of conveyance of persons, baggage, or freight from one side of a river to another. All accomplish the same purpose. The Tariff Act of 1930, Sec. 401, 46 Stat. 708, defines a vehicle in the following language:

"The word 'vehicle' includes every description of carriage or other contrivance used, or capable of being used, as a means of transportation on land, but does not include aircraft."

This is a very broad and comprehensive definition. It was necessary to have inspectors of Customs at these bridges and tunnels during the hours they were open for use just as much as it was necessary to have them upon arrival of ferries or vessels. Dutiable articles could be brought in over the bridges and tunnels just as well as by vessel. Persons entering the country could come in over these fixed structures just as easy as by ship. These structures had to be guarded and the articles inspected. It was encumbent upon the defendant to furnish the inspectors whether the bridges and tunnels were privately or publicly owned. A bond could have been required and exacted by the Government to pay for the extra time service.

88 Section 5 of the act of 1911, as amended by the act of 1920, is not ambiguous but plain and clear. It not only provides extra compensation for overtime services of customs officers and employees who are required to perform services after five o'clock P. M. and before eight o'clock A. M. (defined in the act as "night" service) or Sundays or holidays but it definitely states the basis of the compensation of those who work between five o'clock postmeridian and eight o'clock antemeridian not to exceed two and one-half days' full pay and for the services on Sundays or holidays not to exceed two additional days' pay.

Plaintiffs were on a yearly salary of $2,100 and were on duty after five o'clock postmeridian and before eight o'clock antemeridian or on Sundays or holidays.

It is contended that overtime means only "extension of work hours above eight hours in twenty-four" but there is nothing in the act to this effect. On the contrary, the act plainly states that

the services rendered after five o'clock in the afternoon and before eight o'clock in the morning or on Sundays or holidays shall be "overtime."

In Ferguson v. Port Huron & Sarnia Ferry Co., 13 Fed. (2d) 489, 492, in considering the provisions of section 5, the court held:

"* * * The term 'overtime' appropriately expresses the meaning, and in my opinion was intended to express such meaning: 'Beyond the regular, fixed working hours.' The word 'remain,' in the clause referring to officers required to 'remain on duty between the hours' mentioned, means, according to its proper interpretation, 'remain on duty after reporting for such duty.' The section itself provides that 'such extra compensation shall be paid if such officers or employees have been ordered to report for duty and have so reported, whether the actual' work contemplated 'takes place or not.' As was pointed out by the Supreme Court in its opinion in International Railway Co. v. Davidson, 257 U. S. 506, 42 S. Ct. 179, 66 L. Ed. 341: 'This * * * section defines what shall be deemed overtime.' The only definition thus employed was the reference to the period of time between the particular hours specified, without regard to the question whether the services rendered 'at night' or 'on Sundays or holidays' immediately and continuously followed services just completed for regular pay. Clearly, the object of the statute was to facilitate lading and unlading 'at night' and on Sundays and holidays, irrespective of whether the officers working in connection therewith had previously worked during the regular hours of the immediately preceding regular working 'day.'".

It is contended by the defendant that the portion of the section which reads:

"* * * The said extra compensation shall be paid by the master, owner, agent, or consignee of such vessel or other conveyance whenever such special license or permit for immediate lading or unlading or for lading or unlading at night or on Sundays or holidays shall be granted to the collector of customs, who shall pay the same to the several customs officers and employees entitled thereto according to the rates fixed therefor by the Secretary of the Treasury * * *"

imposes the liability on the carrier and that, unless work is performed under a special license granted by the collector, no extra compensation accrues and nothing can be paid.

Section 451 of the Tariff Act of 1930, 46 Stat. 715, requires that before a special license to unlade can be granted to the master, owner, or agent, a bond in the penal sum to be fixed by the col-

lector to be given "conditioned to indemnify the United States for any loss or liability" which might occur. Section 452 of the same act requires a special license to lade at night or on Sunday or holidays.

The bond required is to "indemnify" the United States for the extra compensation which has to be paid the customs officers and employees who perform duties for which the license is given and which required the services to be rendered at night or on Sundays or holidays.

These customs officers and employees were employed by and received their compensation from the collector acting for the United States. Under the act of March 3, 1917, c. 163, § 1, 39 Stat. 1106, they could not receive their pay for services from any private source. Customs officials especially are forbidden to receive such payment. Revised Statutes, § 1790. Payment had to be made by the Government through the collector and the
90 extra compensation to the inspectors had to come out of the funds of the Government and the Government was liable for the extra compensation. The failure by the Government to collect from the carrier would not relieve it of liability for the extra pay for services during the periods under the statute.

It is contended by the defendant that the proviso of this section gives the collector full authority to require customs officers and employees to work at night or on Sundays or holidays without extra compensation. The proviso reads as follows:

"Provided further, That in those ports where customary working hours are other than these hereinabove mentioned, the Collector of Customs is vested with authority to regulate the hours of customs employees so as to agree with prevailing working hours in said ports, but nothing contained in this proviso shall be construed in any manner to affect or alter the length of a working day for customs employees or the overtime pay herein fixed."

It will be seen that the latter part of the proviso prohibits alteration of the length of a working day of customs employees or overtime pay fixed in the statute. The plain intent of the proviso is to permit collectors of customs at ports where longshoremen and others are accustomed to begin work earlier or later than the hour fixed by the section, to adjust the customs employees' working day to correspond with the customary daylight working period at a certain designated port. In other words, the collector could allow the inspectors to work from 7:00 A. M. to 4:00 P. M. instead of from 8:00 A. M. to 5:00 P. M. because at a particular port it was the custom of the longshoremen to work these particular

hours. It specifically states that this arrangement to a custom of a port shall not affect or alter the length of a working day for customs employees or the overtime pay fixed therein.

We do not think it necessary to go into an extensive discussion of the contention of the defendant that Congress gave legislative approval to the system of compensation and working hours adopted by the collector of customs at the port of Detroit by the passage of the Appropriation and Tariff Acts of 1922 and
91 1930 and by the insertion at the end of section 451 of the Act of 1938, 52 Stat. 1082, of the following provision:

"Nothing in this section shall be construed to impair the existing authority of the Treasury Department to assign Customs officers or employees to regular tours of duty at night or on Sundays or holidays when such assignments are in the public interest. * * *"

There is no denial of the fact that the Treasury Department has the right to assign the customs officers and employees to regular hours of duty during any eight-hour period of the twenty-four hours of a day. However, there is nothing under this provision which restricts or qualifies the right of the customs officers and employees to extra compensation as provided by law for services rendered at night, or on Sundays or holidays.

It is our conclusion that plaintiffs have the right to extra compensation as fixed by section 5 of the Act of 1911, as amended by the act of 1920, for services performed between the hours of five o'clock postmeridian and eight o'clock antemeridian, or on Sundays or holidays, and the defendant is liable for such extra compensation. This is in addition to the base pay which plaintiffs have been paid.

This court can only construe the statute as it is written by the lawmaking body. It cannot indulge in judicial legislation. If the amounts granted as overtime are apparently excessive as compared with those allowed in other occupations, Congress alone can apply the remedy.

Plaintiffs are entitled to recover as follows:

No. 43671. Howard C. Myers	$13,759.41
No. 43672. John H. Arble	10,219.23
No. 43673. Charles C. Martin	12,227.32
No. 43674. Walter O. Plitz	12,277.94
No. 43675. George H. Spitz	10,267.68

It is so ordered.

JONES, Judge; and LITTLETON, Judge, concur.

WHITAKER, Judge, took no part in the decision of this case.

Separate opinion

MADDEN, Judge, concurring in part and dissenting in part:

I agree with the opinion of the court that the word "overtime," as used in the applicable statute, means, contrary to
92 its ordinary meaning, work done outside the hours mentioned in the statute, and on Sundays and holidays, even though some or all of the time so designated as "overtime" falls within the regular daily or weekly working period of the employee who claims extra pay for the "overtime." It follows that so much of the work as is really covered by the statute must be paid for at the statutory rate. I agree also that the Government's failure to collect the amount of its extra expense from the railroads and ferry companies is no answer to the demand of plaintiffs that they be paid the statutory compensation. I disagree, however, with the application of the statute relating to extra compensation to the customs employees at the Ambassador Bridge and the Detroit and Canada Tunnel, and think that the judgments should be reduced to whatever extent they include extra compensation for such services.

The language of the statute, Section 5 of the act of February 13, 1911 (36 Stat. 901), as amended by the act of February 7, 1920 (41 Stat. 402; 19 U. S. C. 267), which is made a part of the Tariff Act of 1930 by reference, shows that the extra compensation to be paid to customs employees was to be collectible from those who used the extra service. The statute says: "The said extra compensation shall be paid by the master, owner, agent, or consignee of such vessel or other conveyance whenever such special license or permit for immediate lading or unlading or for lading or unlading at night or on Sundays or holidays shall be granted to the collector of customs, who shall pay the same to the several customs officers and employees. * * *."

The legislative history of the statute is to the same effect. At the hearings before the Committee on Ways and Means on H. R. 9525 (61st Congress, 2nd Sess.), the companion bill of S. 6011, which became the act of February 13, 1911, several colloquies occurred, in each of which assurance was given that the statute was to be administered without cost to the Government. See pages 462, 463, 464, 470 of the hearings. The Report of the Committee on Ways and Means on S. 6011 recommended passage with the following amendment: "the said extra compensation to be paid by the master, owner, agent, or consignee of such vessels." The amendment was adopted.

93 Plaintiffs do not urge that the 1920 amendment of the act of 1911 changed the meaning of the act in this respect. They urge rather that all of the extra compensation for which they sue has been collectible from the users of the service, and that the Government has, by its own negligence, failed to collect the extra compensation from the users of the service, though it has had the legal right to collect it. In effect, then, we are asked by plaintiffs to decide not only that customs employees who rendered the services which they rendered, are entitled to collect extra compensation from the Government at the rate fixed in Section 5, but that the users of such services should have, in the past, and should in the future, apply for and take out a special license or permit pursuant to Section 451 of the Tariff Act of 1930 (46 Stat. 708, 715; 19 U. S. C. 1451), giving bond to indemnify the United States for any loss or liability which might result from the special license or permit, and to pay the extra compensation to the employees.

Among the services sued for by plaintiffs were those at the Ambassador Bridge, which spanned the Detroit River, connecting Detroit and Sandwich, Ontario. We have found that over this bridge, "Traffic was continuous for twenty-four hours per day and included foot passengers, vehicular traffic, commercial trucks and busses." In my opinion, the statutes do not require the Government to impose upon a pedestrian who walks across the bridge between five o'clock in the afternoon and eight o'clock in the morning, the duty of applying for a permit and giving a bond to pay the extra compensation of customs employees. The pedestrian might well point to the statute, which speaks of a "vessel or vehicle" (Tariff Act of 1930, Section 451, 46 Stat. 708, 715), and urge that even the broad definition of vehicle which appears in Section 401 of that act does not include his means of locomotion. Private automobiles also cross the bridge. I do not believe that Congress intended that each person who drives his automobile or truck across the bridge should have to apply for a permit or license and give a bond to pay for his small portion of extra compensation of customs employees.

Plaintiffs, apparently recognizing that such a construction of the statutes would, in effect, close the bridge to pri-
94 vate traffic from five o'clock in the afternoon until eight o'clock in the morning, and largely destroy its usefulness, do not urge that this burden should be imposed upon such users. They urge rather that the owner of the bridge should be the one who should apply for the permit, give the bond, and pay for the extra compensation of the customs employees. This would be a less inconvenient solution of the problem, but the statutes do not seem to me to permit it. Section 401 (b) of the Tariff Act

of 1930 defines a vehicle, for the purpose here in question, as follows:

"The word "vehicle" includes every description of carriage or other contrivance used, or capable of being used, as a means of transportation on land, but does not include aircraft."

I do not think a bridge is a vehicle, within either the ordinary or this statutory definition of that word, any more than a road is a vehicle. Since the duty is imposed upon the "master, owner, or agent, of such vessel or vehicle" (Tariff Act of 1930, Sec. 451, 46 Stat. 708, 715), it does not fall upon the owner of the bridge, unless, as plaintiff urges, as an agent of the customers of his bridge. In the case of the pedestrians, we need not inquire into the question of agency, since no vehicle is involved at all whose owner might be represented by an agent. In the case of the private automobile or truck, I do not see how the collection of a bridge toll from its owner or driver constitutes the owner of the bridge the agent of the owner or driver with reference to customs, if any, collectible upon his load or baggage, if any. Plaintiff urges that the provisions of Section 453 of the Tariff Act of 1930 (46 Stat. 708, 716), imposing a penalty for unlading without a special permit upon, inter alia, "every other person who knowingly is concerned, or who aids therein," of the value of the merchandise or baggage, and, in some cases, of the forfeiture of the vessel or vehicle, make the owner of the bridge an agent of his customer for the purpose of obtaining a special license and giving bond. This section does not, by imposing a penalty upon one who comes within its definition, make such a person the agent of another for the purpose of applying for a license or giving a bond for him.

Besides, one who permits another to walk across his toll
95 bridge or drive his automobile across it, is not "knowingly concerned" with the others unlading a vehicle without a license, when the other has no vehicle, or if he has one, it is no concern of the bridge owner whether he has or has not anything in it to unlade.

I would conclude from the foregoing that, with reference to what is probably the larger part of the traffic across the Ambassador Bridge, the statutes here in question have no bearing upon it. If the customs authorities are willing to permit entry of such traffic into the United States at this point during any hour of the day, they may do so, but the statutes, in my opinion, give them no power to impose special requirements upon such users of the bridge. And I have grave doubts as to whether they have the power to impose such requirements upon public busses and trucks, since the port is not kept open for their convenience and no extra expense is usually incurred in order to

serve them. Certainly the whole of the cost, outside the hours from 8 A. M. to 5 P. M., could not be imposed upon the few public conveyances that might enter during that time, when in fact the entry is kept open for public convenience to accommodate the much greater number of other persons to whom the statutes relating to special licenses and bonds and payment of extra compensation have, as I think, no application.

What I have said about the Ambassador Bridge is applicable also to the Detroit and Canada Tunnel. A tunnel is not a vehicle and the statute relating to extra compensation does not, I think, apply to it.

If, by what I regard as a strained construction of the word "vehicle," or the word "agent," as used in the statutes, we hold that the Government may collect from the Bridge Company or the Tunnel Company, and therefore must pay its customs employees extra compensation, we have still found no solution for the numerous points of entry where the access to the border is over a free public road. Then there would be no person to whom, by any stretch of interpretation, the extra compensation could be shifted, hence extra compensation would not be payable.

In my opinion, the applicable statute is not one which should receive a strained construction in order to permit plain-
96 tiffs to recover. The public inconvenience of either closing these facilities except for a few hours in the daytime, or else imposing the whole expense of keeping them open upon only a few of those who are accommodated by their being kept open, would be great. As to keeping these facilities open at the public expense, without reimbursement from the users, and paying the employees who work their regular eight hour shift or a part of it, at some time between five P. M. and eight A. M. at the rate of three days pay for one eight hour day's work, or three hours pay for one hour's work, no one contends, I believe, that there is any warrant in the statutes for that. That scale of extra compensation is provided for only in statutes which provide for its reimbursement by the users of the service, and the legislative history shows that it was not intended to be paid when the Government could not recover it. Aside from this section, there is nothing in the statutes to indicate that customs employees are regarded by Congress as being in a different class from other employees of the Government, such as postal employees, who must do their regular day's work at such time of day as the work is needed. It is of interest to note that Congress has provided for extra pay of 10 percent of the regular hourly rate for certain postal employees for work done between

six P. M. and six A. M.[1] It could hardly be supposed that Congress intended that for another class of employees the extra pay, payable out of the public treasury, and without reimbursement to the Government, should be 200 percent instead of 10 percent, for working during the less desirable hours.

97 *XIV. Judgment of the Court*

Feb. 1, 1943

Upon the special findings of fact, which are made a part of the judgment herein, the court decides, as a conclusion of law, that the plaintiffs are entitled to recover.

It is therefore adjudged and ordered that plaintiff Howard C. Myers recover of and from the United States the sum of thirteen thousand seven hundred fifty-nine dollars and forty-one cents ($13,759.41); plaintiff John H. Arble recover of and from the United States the sum of ten thousand two hundred nineteen dollars and twenty-three cents ($10,219.23); plaintiff Charles C. Martin recover of and from the United States the sum of twelve thousand two hundred twenty-five dollars and thirty-two cents ($12,225.32); plaintiff Walter O. Plitz recover of and from the United States twelve thousand two hundred seventy-seven dollars and ninety-four cents ($12,277.94); and plaintiff George H. Spitz recover of and from the United States the sum of ten thousand two hundred sixty-seven dollars and sixty-eight cents ($10,267.68).

99 *XV. Proceedings after judgment*

On March 27, 1943, the defendant filed motions for a new trial.

On April 5, 1943, the court entered the following order on said motions:

ORDER

It is ordered this 5th day of April 1943, that said motions be and the same are overruled.

On May 20, 1943, the defendant filed a request for record in re certiorari under Rule 99-b, together with a motion for an order re compliance therewith, and a notice of intention to file petition for writ of certiorari, and other portions of the record which the defendant deems material to the errors assigned.

[1] Act of May 24, 1928, C. 725, 45 Stat. 725, as amended May 12, 1939, C. 129, 53 Stat. 741, 39 U. S. C. 828.

On May 31, 1943, the plaintiff filed a request for other portions of the record together with the portions deemed material to the errors assigned.

On May 31, 1943, the court filed an order settling the record as follows:

101 *Order of Court settling record*

The defendant having filed a notice of intention to file a petition for writ of certiorari to the Supreme Court in the above-entitled case, and both the defendant and plaintiff having requested that certain portions of the evidence which are attached hereto be included in the record to be certified to the Supreme Court, and the court having found that both portions are accurate transcripts of the original record material to the errors assigned, the same are hereby this 31st day of May 1943, approved as the record to be certified to the Supreme Court.

By the Court

RICHARD S. WHALEY,
Chief Justice.

103 *Portions of the record which defendant deems material to the errors assigned*

JOHN H. ARBLE (plaintiff)

Page 2.

Q. Give the reporter your name.

A. John H. Arble.

Q. Age?

A. Thirty-four years.

Page 3.

Q. When were you appointed a customs inspector?

A. July 1st, 1930.

Page 7.

Q. Was there continuous traffic over the bridge [Ambassador] during this time?

A. It has never been closed since opened.

Q. What was the nature of the traffic over that bridge?

A. Foot passengers, vehicular traffic, commercial trucks, commercial buses.

Q. Merchandise come over?

A. Yes, sir.

Q. What is the Michigan Central Tunnel?

A. It is a railway tube under the Detroit River between Windsor, Ontario, and Detroit.

Q. Has that ever been closed?

A. It has never been closed except by a wreck, but it has never been closed officially to business.

Page 8.

Q. What do you mean by the Wabash Ferries?

A. Wabash ferries are international freight-car ferries plying between Windsor, Ontario, and Detroit, Michigan, owned or operated by the Wabash Railway Company.

Q. Do they carry freight only?

A. In the beginning of this particular period of time there were some passenger traffic and passenger cars came across, but since then it has been discontinued and nothing but freight——

Mr. STALEY. That is all carried in railroad cars?

A. Yes, sir; either passenger or freight cars loading on the boat.

Q. There is no vehicular traffic, so called, on that ferry? Just freight cars? I mean just railway cars?

A. That's right.

104 Q. Was that operated day and night?

A. Yes, sir.

Q. Did it require continual service for twenty-four hours?

A. There are some periods of time that any particular vessel was tied up at the dock——

Q. What do you mean by P. M. Railway Ferry?

A. Abbreviation for Pere Marquette, international boats plying between Windsor and Detroit, hauling freight in cars.

Q. Would those ferries carry passengers—the P. M.?

A. Not during the period of time represented in this petition.

Q. What do you mean by Grand Trunk Railway Slip Dock?

A. Grand Trunk Railway Slip Dock is the termination point for the tie-up for boats arriving in Detroit from Windsor on the Grand Trunk Railway.

Q. Those boats would carry what?

A. Both passenger trains and freight trains.

Q. But the traffic would come over in railway cars?

A. Right.

Page 13.

Q. Now let us go to the Michigan Central Tunnel; describe the services performed at that tunnel by you during this period during the night time and on Sundays and holidays?

A. The services in connection with the lading and unlading of merchandise; services in connection with the transportation in bond of merchandise; transportation and exportation in bond and exportation of merchandise for the benefit of drawback.

Q. Did the Michigan Central have two stations served by Detroit customs inspectors?

A. Yes, sir.

Q. One was at a freight station, was it?

A. One was in the freight yards for freight work.

Q. And the passenger station the other?

A. Yes, sir; approximately nine hundred to a thousand feet apart in a direct line.

* * * * *

Q. Did they pay this overtime for the passenger service?

A. They did for Sundays and holidays.

Mr. STALEY. During this period of time involved in your action?

A. Yes, sir; they did.

105 The COURT. Who do you mean?

A. The Michigan Central Railway reimbursed the customs cashier who in turn issues a voucher to the customs inspectors.

Page 21.

Q. Mr. Arble, what were the customary working hours of customs employees at the port of Detroit during the time covered by your bill?

Mr. STALEY. I object to the question. The witness can tell what hours were worked by customs employees, but what is customary——

By the COURT. Was there such a thing as customary working hours at the port of Detroit or did you work during hours that they told you to work?

A. Worked the hours you were assigned.

The COURT. And one hour was just as customary as another that you were assigned to?

A. Yes, sir; if you could keep awake.

Page 28.

Q. And your eight-hour tour of duty since your appointment has included any hours of the day?

A. Yes, sir.

Q. And the same on Sundays and Saturdays and holidays your tour of duty has included any hour of the day?

A. Anything within the twenty-four.

Q. And at the time you were appointed hadn't that system of twenty-four hour customs service in this district been established?

A. I do not know when that was established.

Q. Well I am asking you when you were appointed wasn't that —hadn't that been established?

A. When I went to work that was the customary procedure.

Q. That is that they provided a full customs service for twenty four hours each day?

A. Yes, sir.

Q. And they provided that twenty-four hour service seven days in the week?

A. I went to work at the bridge and it has never been closed.

Q. I mean that twenty-four hour service was then provided for each day of the week?

A. It was provided at the bridge at that time and it has never been discontinued twenty-four hours a day; that is before I went to work.

106 Q. And with regard to the individual customs inspector it was divided into a shift of eight hours so that there were three duty shifts of eight hours each in every day?

A. Yes, sir.

Q. And those hours have been the prevailing working hours for customs inspectors during the entire time you have been in the service?

Mr. DRYSDALE. I object to the form of that question—"prevailing working hours." There are no prevailing working hours.

The COURT. You mean eight hours.

Q. Eight hours assigned to any period of the twenty-four?

A. Eight hours is the prevailing working time for any one inspectors.

Page 122.

Q. During the period of your claim around the Detroit stations, you had during the period either a forty-four or a forty-eight hour week as the basic week?

A. Yes, sir.

Q. And during the time you were actually paid for a forty-four or a forty-eight hour week?

A. I worked those hours and received the base pay.

Q. What I am getting at is this: maybe it will clarify it just a little. Say your week began on a Wednesday, and your tour of duty included a Sunday——

A. Yes, sir.

Q. Now for that week it would be counted as forty-four or forty-eight hours, and you would be paid on the base pay for the full week; I mean you got your compensation for Sunday and holidays or after 5:00 o'clock on the base pay basis?

A. The question is confusing.

Q. Well maybe it is. You worked on say a particular Sunday?

A. Worked on Sunday; yes.

Q. You were paid the base pay for that Sunday?

A. I was paid monthly, paid $175.00 a month, twice a month.

Q. But in order to get that you must have performed a service of forty-four or forty-eight hours a week?

A. I averaged forty-eight and forty-four hours a week.

Q. Depending on——

A. At all stations in Detroit; yes, sir.

Q. But the Sunday work which you performed was necessary in order to have the forty-eight hour week?

A. To comp[illegible] that amount of time; yes, sir.

107 Q. And you were paid on the forty-eight hour week basis?

A. I was paid the regular base pay.

Q. Which would be for a forty-eight hour week?

A. I would presume so.

Q. And if you didn't work forty-eight hours you wouldn't get your full basic pay?

A. Except at vacation periods.

Q. I mean the regular——

A. Yes, sir.

Q. Your regular week was a forty-eight or a forty-four hour week?

A. Yes, sir; regular tour of duty.

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Page 54.

Q. During the time involved in the plaintiff's suits here, namely, from 1931 to 1937, at what stations in Detroit was extra compensation paid for Sunday and holiday service?

A. At the railroad car ferries—all the railroad car ferries, and the passenger station on the Michigan Central Railway.

Pages 81–85.

X Q. And when you joined the service, and ever since, there was the system at Detroit of assigning customs inspectors to regular tour of duty of eight hours each out of every 24 hours, for weekdays, Sundays, and holidays?

A. Yes, sir. There were schedules like that.

X Q. And your claim which you have filed here relates solely to hours of service which you have performed during any such assigned 8-hour daily tour of duty?

A. That is right.

X Q. With respect to this exhibit, Arble R–1, the first column in the body refers to "Number of Permit." Will you please state for the record what that column relates to?

A. I am not familiar with that column.

X Q. You do not know what that number refers to.

A. I execute no records that have to do with that permit.

X Q. And is it your testimony today that you have no knowledge of what that column is that pay voucher represents? Headed "permit number."

A. I know what it represents; yes, sir.

108 X Q. What does it represent?

A. It represents a permit that is issued to various companies who have posted bonds for the payment of services.

X Q. And are those the permits provided under the same Overtime Compensation Act or its amendments as you now claim are applicable to you?

Mr. DRYSDALE. I object to that, Your Honor, as calling for a conclusion. It has nothing to do with securing the permits.

Mr. STALEY. He has been in the service for several years.

Commissioner HOBBS. I will have to sustain the objection.

By Mr. STALEY:

X Q. Do you know whether or not the services covered by that exhibit were services rendered to carriers, to vessels, or to vessel carriers?

A. It so happens that all entries here are made for work on vessels.

X Q. On vessels?

A. That is right.

X Q. And what vessels? Do the names of the vessels appear?

A. Each respective name is listed here.

X Q. And whose vessels are there? At what station?

A. No; it does not five you any of the details as to what the company is, who——

X Q. Do you know at that stations the services were performed?

A. No; I could not tell you that, at this time, because I do not know where these particular stations or these particular boats were unladen or boarded. It was somewhere in the Detroit River, I know that.

X Q. Are the vessels named, there, vessels passing through the Detroit area, as distinguished from vessels operated by the car ferries or other ferries?

A. Yes; of course.

X Q. Have you examined the records to determine whether or not that particular claim of overtime which that voucher represents is for daily service rendered in excess of your regularly assigned 8-hour tour of duty for that day?

Mr. DRYSDALE. I object to that question, Your Honor. It calls for a conclusion. The exhibit speaks for itself.

Commissioner HOBBS. I overrule the objection.

Mr. STALEY. I have asked him whether he has examined the record to determine.

Commissioner HOBBS. Answer the question.

Mr. STALEY. To determine whether that extra service was in addition to your regular 8-hour assigned tour of duty.

A. I do not gather what you mean by "examining the records." What record would I examine?

By Mr. STALEY:

X Q. You know your records in Detroit give you every day exactly what hours your have served?

A. That is right. You mean the schedules of work?

X Q. Yes.

A. Or the time sheets?

Q. Certainly.

A. That is right.

X Q. Now, have you examined any documents to determine whether or not the services rendered appearing by that exhibit were services rendered during your regularly assig. 8-hour tour of duty for that day, or whether it was in addition to any assigned regular 8-hour tour of duty?

A. I wouldn't have to examine the records. I know definitely that these are for the hours in addition to the scheduled hours.

X Q. For hours in addition to the regular 8-hour assigned tour of duty?

A. That is right. I know that is right. I said that this voucher represented hours for hours in addition to the scheduled hours.

X Q. At Detroit, hasn't it been the practice since your appointment, where overtime compensation accrues, under permits, that such overtime compensation money was paid by the carriers involved to the collector of customs for that district?

A. I could only answer that by hearsay.

Mr. DRYSDALE. I object to it.

Commissioner HOBBS. Naturally, he says he cannot answer it.

By Mr. STALEY:

X Q. Do you state that you do not know definitely one way or the other, here, today?

A. I have never worked in the accounting division of the Customs House.

X Q. That does not answer my question, Mr. Arble. As a member of the committee which investigated these matters, did you have any information on that subect, at all, or do you have today any accurate information on it?

A. I do know what the mechanics are of handling it.

X Q. What are the mechanics?

A. The mechanics are for all companies—the law provides for all companies who request the services of customs officers at nights from the hours from 5 p. m. to 8 a. m., or on Sundays and holidays, before being provided the service of customs officers, of making the request for their services, to put up bond, to post

an indemnity bond with the collector of customs which is certified by the Bureau of Customs as being a responsible bond for the payment or reimbursement of all services performed nights, Sundays, and holidays, by those customs officers.

110 Page 90.

X Q. I am speaking of overtime compensation which has been paid you. Have you examined any records at all to determine exactly whether such overtime compensation was for services in addition to your regular 8-hour assigned tour of duty?

A. Why, I know that it was for services outside my regular scheduled tour of duty, without examining the records.

Page 95.

X Q. Is it your testimony today that you received overtime compensation during any 24 hours, under the permit system, for services rendered during your 8-hour required period of service? That is perfectly clear, I think.

Mr. DRYSDALE. That is right.

By Mr. STALEY:

X Q. Was it beyond the 8-hour period of service, or was it rendered within the 8-hour period of service?

Mr. DRYSDALE. You mean, what we claim, here?

Mr. STALEY. No. I am speaking of these services for which he has received additional compensation under the voucher which he has presented, and which in turn identifies it as being done under permits.

A. The thing is mixed up to me, the issues in both cases. All money I received under permits was in addition to my regular scheduled working hours, on these vouchers.

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R. D. Q. Do you know of any instance—I may have asked it, but I will ask it again—where the services were performed; where overtime compensation was paid, where the carrier was not responsible for such payment? Do you know of any instance where overtime compensation has been paid, where the carrier was not responsible for payment of the compensation?

A. I have no knowledge of it.

R. D. Q. One way or the other?

A. No.

111 BYRON E. REDDICK

Page 52.

Q. Well there is no doubt about it that when the Ambassador Bridge was opened that there was a full twenty-four hour tour of duty established?

A. That is what was established at that time.

Q. Or twenty-four hour service?

A. Yes, sir.

Q. And that the tour of duty of any inspector, regular tour of duty was any eight-hour tour of duty during that period?

A. Yes, sir; the assignment of any eight hours they wished.

Q. And they assigned them to any eight hours the same on Sundays and holidays as they did during the week days?

A. That is correct.

Q. And that continued from that time down to the present?

A. Yes—what was that?

Q. I say that eight-hour tour of duty in that manner has continued from 1929 down to the present?

A. Yes, sir.

112 HOWARD C. MYERS

Page 66.

Q. Mr. Myers, does your claim for overtime cover any other period than an eight-hour tour of duty period, whether it be on a week day, a holiday, or a Sunday?

A. No; it does not.

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Q. But at any rate after you were appointed you did perform regular eight-hour tour of duty?

A. Yes, sir.

Q. With an allocation during any twenty-four hour period?

A. That's right.

Q. And that practice continued from the time of your appointment down to the present time?

A. That's right.

Q. You were appointed after the Ambassador Bridge and the tunnel—I mean the passenger tunnel—had been opened; weren't you?

A. I was appointed after the bridge had opened but before the tunnel.

Q. And at that time did you understand that additional inspectors had been taken on as a result of the extra work which the bridge and the tunnel required or would require?

A. Yes, sir.

Q. Were there quite a number of inspectors taken on at that time?

A. There were.

Q. And ever since you have been appointed down to the present time your tour of duty—and I of course mean the eight-hour tour of duty—has been the same on Saturdays and Sundays as it has been for the weekdays?

A. That's right.

Q. The traffic over the Ambassador Bridge and through—is that the Detroit tunnel for passengers?

A. Detroit and Canada tunnel.

Q. Is a twenty-four hour service; that means there is a constant travel over these facilities during the full twenty-four hours of each day?

A. There are; yes, sir.

113 Q. As a matter of fact there is considerable population on each side of the river that is served by the tunnel and the bridge?

A. I would say there was.

Q. With the result that there is a considerable stream of traffic all the time?

A. Yes.

Q. And particularly on Sundays and holidays; is that correct?

A. That's right.

114 CHARLES C. MARTIN (Plaintiff)

Page 79.

Q. When were you appointed a customs inspector?

A. June 16th, 1930.

Page 83.

By Mr. STALEY:

Q. Mr. Martin, you received a temporary appointment November 4th, 1929, as I understand?

A. Yes, sir.

Q. And at the time of that appointment were you advised by the office—and I mean by the collector's office here—that customs inspection services were provided for each twenty-four hours?

A. I was told that we were subject to call and there would be night service.

Q. And were you advised that eight hours would constitute the prevailing working hours for each day?

A. That we would work in eight-hour shifts as a rule.

Q. Irrespective of the hour of the day?

A. Yes, sir.

Q. And irrespective of whether it was a week day or a Sunday or holiday?

A. Yes, sir; subject to call on Sundays and holidays.

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Q. Now at the time of your appointment over the bridges and the Detroit Tunnel there was a twenty-four hour interstate travel, wasn't there?

A. It was open to the public twenty-four hours.

Q. And there was established a twenty-four hour customs service?

A. Customs officers were stationed there twenty-four hours.

Q. And that service has been provided ever since the Bridge was opened?

A. Yes, sir.

Q. Or the tunnel opened?

A. Yes, sir.

Q. You knew that when the bridge or tunnel were opened the additional inspectors were taken on to take care of the twenty-four hour service, didn't you, or don't you? Do you one way or the other?

A. I don't know as I knew that they were going to be open twenty-four hours of the day; I may have: I knew it immediately afterwards of course; but at the time I received my appointment, is that it? In 1930? Is that the question?

115 Q. Yes; I will put it that way first?

A. I did know it then, yes; at the time I received my appointment.

Q. And you knew they were putting additional inspectors on to take care of that traffic in those hours of duty?

A. Yes, sir.

Q. Were you appointed as one of the new inspectors provided for that service?

A. Yes, sir.

116 WALTER O. PLITZ (Plaintiff)

Page 100.

Q. When were you appointed a customs inspector?

A. On October 20th, 1930.

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Q. That answers it; but there is no doubt that the claim as it is presented here with respect to Sundays and holidays does cover all-eight-hour tour of duty periods for Sundays and holidays?

A. Yes, sir; and hours extra.

Q. It includes both?

A. Yes, sir.

117 GEORGE H. SPITZ (Plaintiff)

Page 108.

Q. When were you appointed customs inspector?

A. My first appointment was a temporary appointment; I believe in November of 1929.

Page 113.

Q. What I have in mind: do you have any claim during the week day period other than that which was covered by your assigned eight-hour period of duty?

A. No; the eight-hour assigned period.

Q. Now with respect to Sundays and holidays, you did have a regular eight-hour tour of duty assigned?

A. Yes, sir.

Q. And did you perform on Sundays and holidays, on which your claim here is made, any services beyond your assigned eight-hour tour of duty?

A. No, sir.

118 HARRY M. STRINGER

Page 131.

Q. Prior to the opening of the Ambassador Bridge on days other than Sundays and holidays, had the practice of 8-hour tours of duty existed for the 24-hour day?

A. At stations that were open 24 hours a day it was. Some stations just ran 18 or 19 hours.

Q. Were the men generally assigned to 8-hour tours of duty?

A. Yes.

Q. Covering any period during the 24-hour day?

A. Yes, sir.

Q. Prior to the opening of the Ambassador Bridge?

A. Yes, sir.

Q. And did that assignment of tour of duty of 8 hours apply prior to the opening of the Ambassador Bridge to Sundays and holidays?

A. Yes, sir.

Q. Has at any time any extra compensation been made to any of the inspectors under their regularly assigned 8-hour tours of duty during the week days?

A. No.

Q. And that has been ever since 1920?

A. Since 1920; yes.

Q. And prior to 1920 the law did not provide for it?

A. No.

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Q. Were the men assigned to regular 8-hour tours of duty?

A. Yes.

* * * * *

Q. And has that practice continued ever since the Ambassador Bridge was opened, at the Ambassador Bridge?

A. Yes, sir.

Q. And with respect to the week day assignments, the practice at the Ambassador Bridge was the same as at all of the other places, 8-hour tours of duty were assigned for any of the 24 hours?

A. Any of the 24 hours; yes.

Q. Were assignment lists prepared covering the hours on Sundays and holidays that the men were assigned to, and listing the compensatory days off which they were given?

A. Yes, sir.

Q. And lists were prepared for each one of the posts or stations?

A. Yes, sir.

Mr. STALEY. I produce photostatic copies of a specimen assignment list which I will ask that the reporter mark "Government's Exhibits A–1, A–2, A–3, A–4, A–5 and A–6 and A–7."

119 Commissioner RAMSEYER. The documents will be marked as indicated.

(The documents referred to were marked "Government's Exhibit A–1, A–2, A–3, A–4, A–5 and A–6, and A–7.").

[Exhibit A–1 is attached hereto as a specimen Assignment List.]

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Q. After the opening of the Ambassador Bridge, with respect to the Walkerville Ferry and the Detroit and Windsor Ferry, what was the practice adopted with respect to assignment of men to duty at those stations during the week and on Sundays and holidays?

A. They worked staggered 8-hour shifts weekdays and Sundays, and if they worked on Sundays or holidays they received compensatory time off some time the following week, or as soon as we could give it to them.

Q. And that practice adopted at the ferries was the same as was adopted at the Ambassador Bridge?

A. Yes.

Q. And that practice continued in the same manner from that period on to the time these petitions were filed, which was September 19, 1937, and the only change is that today the Detroit and Windsor ferries have discontinued their service since that time?

A. Since July 18 of this year.

Q. When was the Detroit and Canada Tunnel opened?

A. November 3, 1930.

Q. And was the same system of inspection adopted at that time as at the Ambassador Bridge?

A. Staggered 8-hour shifts covering the 24 hours. If they worked on Sundays or holidays they received compensatory time off for that.

Q. As I understand it, they are the five stations at which, subsequent to the opening of the Ambassador Bridge, the same system of inspection has been adopted?

A. What was that again, please?

Commissioner RAMSEYER. Read the question.

(The reporter read the question as above recorded.)

By Mr. STALEY:

Q. That is, the assignment of 8-hour duty during 8 hours with compensatory time off for Sundays and holidays?

A. Yes, sir.

120 Page 139.

Q. Please state whether or not the assignment of inspectors to services at those two ferries on Sundays and holidays were made in pursuance of such application and permit.

A. They were.

Q. All that service?

A. Yes, sir.

Q. Now, where services are rendered under such application and permit, who pays the compensation for the overtime?

A. The carrier, the applicant.

Q. And did the inspector file a special voucher covering the service of his assignment to duty under such permit?

A. He did.

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Q. Prior, then, to 1928, did the inspectors at the Michigan Central Tunnel work 7 days or not?

A. They worked 7 days.

Q. I am speaking now of prior to 1928.

A. Yes, sir.

Q. And for overtime during the week or Sundays or holidays, who paid the overtime compensation?

A. The carriers.

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Q. That practice, you say, was changed in 1929. Then the same practice was adopted at the Ambassador Bridge?

A. Yes, sir.

Q. And since 1928 the men have worked at the Michigan Central Tunnel an eight-hour period?

A. Yes, sir.

Q. During the week, Sundays or holidays?

A. Yes, sir.

Q. And have received compensatory time off?

A. Yes, sir.

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Q. Prior to the opening of the Ambassador Bridge, what were the hours of duty assigned to the inspectors at the three railroad ferries?

A. Staggered 8-hour shifts.

Q. For how many days?

A. 8 even days a week.

121 Q. And how many hours a week did the men work?

A. They worked 52 hours a week.

Q. Prior to the bridge? I am speaking of prior to the bridge.

A. Prior to the bridge they worked 56 hours a week.

Q. And how was their compensation paid for those 56-hour weeks?

A. The Sundays and holidays were paid for by the carrier.

Q. And was that payment made under or by virtue of the permit which has been produced here as Defendant's Exhibit C-1?

A. Yes, sir.

Q. And has there been any change in that practice since the opening of the Ambassador Bridge with respect to the three ferries; namely, the Wabash, the P. M. Railroad Ferry, and the Grand Trunk Slip Dock?

A. There has been no change since. It has continued right along.

Q. Then, as I understand your testimony, except with respect to the Michigan Central Tunnel, for a period between 1928 and the opening of the Ambassador Bridge, any time in excess of the regular 48-hour week was paid for by the carriers?

A. Yes, sir.

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Q. Now, in order to summarize the petitions which have been filed in this case, covering a period from September, 1931, to 1937, it has already been testified to that the claim relates to services performed under regular assigned 8-hour tours of duty. As I understand your testimony with respect to the Ambassador Bridge, the Walkerville, and the Detroit and Windsor ferries, and the Michigan Central Tunnel, the men have performed and been paid for a regular tour of 8-hour duty for week days whether before or after 5 p. m., and for Sundays and holidays, and they have been given compensatory time off during the week days for the 8-hour services rendered on holidays and Sundays?

A. Yes, sir; that is correct.

Q. Now with respect to the three car ferries—speaking now of the period which this petition covers—the men have worked 52 hours a week, the regular working week being 44 hours?

A. Yes, sir.

Q. And the 8 hours being additional?

A. Yes, sir.

Q. And that for the 8 hours additional time each week, an 8-hour period during the 7 days, the men have been paid overtime by the carrier, pursuant to this permit which has been offered in evidence as Defendant's Exhibit C–1. Is that correct?

122 A. Yes, sir.

Q. Has any work covered by the claims of the inspectors here in suit been rendered pursuant to the permit of the carrier?

A. What was that again?

Q. Has any work covered by the claims of the inspectors here in suit been rendered under the permit which the carrier secured, being Form C–1—Being Exhibit C–1?

Mr. DRYSDALE. I object to that question, your Honor.

A. No.

123 WALTER S. PETTY

Page 6.

Q. State your name, age, occupation, and residence?

A. Walter S. Petty. Age 58. Occupation Assistant Collector of Customs at Detroit. My residence is 214 Merriwether Road, Grosse Pointe Farms, Detroit, Michigan.

By Mr. STALEY:

Q. Mr. Petty, you have been Assistant Collector of Customs at Detroit for how long?

A. Since 1927.

Q. And how long have you been in the Customs Service?

A. 33 years.

Q. And where were you stationed before Detroit?

A. I was in the Customs Agency Service, travelling on the road.

Page 169.

Q. Now, just exactly what was the practice prior to the opening of the bridge by which carriers paid this compensation for Sundays and holidays, and overtime?

A. The inspectors would render a statement of their time worked to the Chief Inspector's office, and then our office—that would be sent up to our office, the office of the Collector of Customs, and we would bill the carriers for that extra compensation, and when we received that extra compensation a voucher was prepared for the inspector's signature.

Q. Was that the form which had been introduced here as Exhibit C–3?

A. It is the night service voucher. That is it [indicating]. After the inspector signed that we drew a check on that account and paid it to the inspector.

Q. Where did you get the money from, prior to the Appropriation Act of 1938, to pay that?

A. We got that from the carrier. We collected it from the carrier, and then in turn paid it to the inspector.

Q. How was that collection from the carrier carried?

A. It was carried in a special deposit account under the night service.

Q. In the name of the Collector?

A. Yes.

Q. And were the checks issued by the Collector?

A. Yes, checks were issued by the Collector, drawn on that fund, payable to the inspectors involved.

124 Page 171.

Q. And have all overtime payments for holidays and Sundays to the inspectors there at Detroit been for moneys which the carriers are responsible to pay?

A. Oh, yes.

Q. And have the services of all those inspectors been rendered under this permit application which has been introduced here as Defendant's Exhibit C–1?

A. Yes.

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Q. Now, we understand that, with respect to the Detroit and Canada Tunnel, the Detroit and Windsor Ferry, the Ambassador Bridge, the practices have been the same; namely, the men are assigned to 8-hour tours of duty for any week day, Sunday or holiday, and that for the time, the number of hours they worked on holidays and Sundays, they received compensatory time off during the week?

A. Correct.

Q. Was that practice also true after the opening of the Michigan Central Tunnel, with respect to the freight service at that tunnel, that you have described, or is there a different practice?

A. At the present time?

Q. Yes.

A. No; the same practice prevails there.

Q. As where? At the Ambassador Bridge?

A. Yes.

Q. And is there any difference with respect to the passenger service rendered for the Michigan Central Railroad?

A. Well, we pay extra compensation for Sunday and holiday work on passenger trains.

Q. And is that service performed under the permit of the carrier which is C–1?

A. That is right.

Q. And does the carrier pay the compensation for those Sundays and holidays?

A. Yes.

Q. And that same practice, we understand, applies to the Wabash Ferry, the P. M. Railroad Ferry, and the Grand Trunk Railroad Slip Dock?

A. Yes, they get extra compensation for Sunday and holiday work at those places.

By Commissioner RAMSEYER:

Q. Extra compensation?

A. Yes; extra compensation.

125 Q. Only on passenger trains or for both passenger and freight?

A. For both passenger and freight at these three railroad car ferries just mentioned.

Q. There is extra compensation for holidays and Sundays?

A. Yes.

By Mr. STALEY:

Q. And that extra compensation is paid by the carrier?

A. That is right.

Q. And are the inspectors assigned under the permit which the carrier files with the Collector?

A. That is right.

Q. And their payment for services is made just as you have previously outlined?

A. Right.

Q. And, of course, those men who receive the extra compensation under the carrier's permit for services on Sundays and holidays receive no compensatory time off?

A. No; absolutely not. That is, not for the Sunday and holiday work.

Q. That is what I mean. They do not receive any compensatory time off for Sunday and holiday work?

A. No.

Page 175.

Q. * * * Inspectors receiving the extra compensation at the car ferries and railroads during the week's time, do they work regular 8-hour tours of duty any hour of the week day?

A. Yes.

Q. And they are paid by the Government for their regular 8-hour tour of duty during the week days irrespective of the time when the services are performed?

A. That is right.

Q. Do you have enough inspectors at your station to provide for the car ferries, so as to give such men compensatory time off for services rendered on holidays and Sundays, such as at the Ambassador Bridge?

A. No; we do not.

Q. It would mean an increase of force, would it, to apply to the car ferries and passenger service, the Michigan Central Tunnel, the same practices which have been adopted with regard to the other stations?

A. That is right.

Q. And there are not enough inspectors there now to do that?

A. That's right.

Q. So they have compensatory time off for work on Sundays and holidays?

A. Inspectors do not receive compensatory time off at these stations, as they receive additional compensation for such overtime work performed.

126 Page 180.

By Mr. DRYSDALE:

Q. Regarding these monthly applications made by the carriers for Sunday and holiday service, or night time service of inspectors, are those applications made each month?

A. Yes; I think they are made each month.

Q. They are still made each month, are they?

A. They are still made each month, so far as I know.

Q. There was no change with respect to that practice when the Ambassador Bridge was opened, was there?

A. No; not so far as the practice is concerned concerning the car ferries, no change.

Page 197.

Q. Irrespective of what the practices earlier might have been, during the period covered by these suits, that is, between 1931 and 1937, the method of payment of inspectors at the Michigan Central Tunnel has been the same as at the Ambassador Bridge?

A. Yes; that is right.

Q. Now, there is one other matter which I think probably I have not clearly placed in the record. With respect to the inspectors assigned to the Ambassador Bridge, how many hours a week do they work, including the services they perform on Sundays and holidays?

A. 44 hours a week.

Q. And they are given compensatory time off?

A. For anything in excess of that.

Q. Where that service is performed, 44-hour service, is performed on a Saturday or on a holiday, or a Sunday, are they given compensatory time off for that 8-hour tour of duty?

A. That's right.

Q. What is the situation with respect to the inspectors assigned to the car service, the number of hours they work?

A. They work 52 hours a week.

Q. How are they paid with respect to the regular 44-hour service?

A. They get extra compensation, or two days' pay for every Sunday and holiday worked.

Q. For what?

A. For 8 hours overtime that they put in.

Q. Out of the 52?

A. Out of the 52.

Q. And they are given no compensatory time off, like these men at the Ambassador Bridge?

A. That's right.

127 HARRY W. SMITH

Page 6.

Q. Your age?

A. 64; almost 65. I will be 65 in October.

Q. Occupation?

A. My occupation? My title is liaisson officer in the Bureau of Customs.

Q. Here in Washington?

A. Here in Washington.

Q. And your address of course is here?

A. Yes.

Commissioner RAMSEYER. Take the witness.

By Mr. STALEY:

Q. How long have you been in the Customs Service, Mr. Smith?

A. 38 years past.

Q. At my request, have you made an examination of the records of the customs service of Detroit for the purposes of determining the amount of overtime due, which was payable to Howard C. Myers, John H. Arble, Charles C. Martin, Walter O. Plitz, and George H. Spitz?

A. I have.

Page 17.

Q. Now, during the period that Howard C. Myers, with the other custom inspectors in the Detroit area, except as otherwise

specially noted rendered services on a 44-hour week basis, performed by daily tours of duty of 8 hours, with Saturday a half holiday, have they received their base pay, less whatever deductions you were required to make during the period of the Economy Act?

A. They have received their base pay.

Q. And have they at any time worked more than 8 hours on a single day except Saturday half holiday, which would be 4 hours?

A. Generally, no; but there might be a qualification. You have asked the question in that way, and I have to answer.

Q. I want you to answer the question as it is put to you.

A. Generally, no. There might be cases where the men might have worked 10 hours today and 6 hours tomorrow, where, because of certain exigencies today was lengthened and tomorrow was shortened.

Q. Are they very rare exceptions, or are they frequent exceptions?

A. Well, I would say from recollection now, after three or four months' examination that they were quite regular.

128 Q. And under the usual accounting now, they were paid for an 8-hour tour of duty, which was their base pay; is that correct?

A. That's right.

Q. And on any day covering the overtime period as well as the regular period, did they work beyond the 8 hours, except in the rare instances which you have mentioned?

A. No.

Q. When Myers and the other plaintiffs have been on duty at the railway ferries, namely, the Wabash, the Pere Marquette, the Grand Trunk slip dock, or the Michigan Central passenger station, between the hours of 12:01 a. m. and 11:59 p. m. on Sundays or holidays, please state whether or not such services have been rendered at the request of a carrier under the permit system.

Mr. DRYSDALE. Of course this, you understand, is subject to my objection? I wish to object to it, Your Honor.

Commissioner RAMSEYER. Your objection may apply to all questions along this line, without repetition.

Mr. DRYSDALE. Regarding the permit system.

Commissioner RAMSEYER. All right.

A. They have received their overtime compensation.

By Mr. STALEY:

Q. And paid by whom?

A. Paid by the collector of customs.

Q. And where is the collector of customs to secure that?
A. He has collected it from the carriers.

By Commissioner RAMSEYER:

Q. Now, that is for Sunday and holiday services, you speak about?
A. Yes.
Q. Between 8 a. m. and 5 p. m.?
A. At these particular stations.
Q. Yes?
A. Well, hold on. You said from 8 a. m., at these particular stations. They had adopted the policy of making 12:01 Saturday night to 12 midnight Sunday night as Sunday, so that was a policy that they had pursued, do you see?
Q. That was not in the case before. In the case before, there was no dispute at all but what night-time service was for 5 p. m. to 8 a. m.
Mr. DRYSDALE. That is right.
Commissioner RAMSEYER. Whether week-day or holiday or Sunday.
Mr. STALEY. Maybe I will clear it up.
Commissioner RAMSEYER. And that Sunday and holiday service was between 8 a. m. and 5 p. m. on Sunday and holidays.
Mr. STALEY. I think I will clear it up.

By Mr. STALEY:

Q. Those services rendered on Sunday or holidays at those particular stations which I have called your attention to,
129 was that rendered in excess of the regular 44-hour week?
A. That was in excess of the 44-hour week.

Page 21.

Q. At those stations where compensatory time was given during the week day for services performed on a holiday or a Sunday, please state whether or not the hours for which such compensatory time was given were within the regular 44-hour week?
A. It was within the 44-hour week. In other words——
Q. You have answered. Now, with respect to those stations which we have referred to in my question, where extra compensation was paid at the request of the carrier under the permit system, were the hours of services in such instances which were rendered on a Sunday or a holiday in excess of the 44-hour required week or not?
A. They were in excess of the 44-hour.

Page 39.

Q. Please state whether or not any services performed by Myers on the basis of these documents we have here, for which overtime

compensation is claimed, were rendered at the request of the carrier, under the permit system?

A. No.

Q. Was any service performed by Arble, rendered at the request of the carrier, under the permit system?

A. You are speaking about this claim?

Q. Yes.

A. No.

Q. I am referring to the claims which you have testified to. Were any services performed by Martin, rendered at the request of the carrier, under the permit system?

A. No.

Q. Were any services rendered by Plitz rendered at the request of the carrier, under the permit system?

A. No.

Q. Were any services by Spitz rendered at the request of the carrier under the permit system?

A. No.

130 *Copy of stipulation*

Filed February 17, 1942

It is hereby stipulated by and between the United States of America, represented by its Attorney General, and the plaintiffs in the above entitled actions, represented by their attorney of record, that the photostatic copy of the document hereto attached, Customs Form 3851, Treasury Department, October 1935, is the form of Customs Service for the application and permit to lade or unlade merchandise, baggage or passengers and for overtime services rendered under Section 451 of the Tariff Act of 1930 and the permit issued thereunder.

Said form was used at the port of Detroit from and after October 1935 when overtime was paid and when so used, one copy remained with the Collector and the other was sent to the Inspectors who were to perform overtime services thereunder and each of such inspectors who performed overtime services under that form personally filled in the time under the column headed "Time Employed" and personally signed his name in the column "Signature of Officers", certifying to the overtime services rendered to the carrier. When completed the signed copy was returned to the Collector.

Prior to October 1935 a similar form was used but was kept at the Collector's Office and filled out by the Collector and was not signed by the Inspectors who performed services thereunder. The billing in such cases was made by the Collector from slips

STATEMENT OF SERVICES RENDERED

SEP 14 1936	STEAMER WINDSOR WABASH RY.	4 PM to PM	2100.	$ 83	Night	R. J. Lyons ✓
SEP 15 1936	WABASH RY.	6 00 PM				
SEP 16 1936	STEAMER WINDSOR WABASH RY.	9 30 PM 6 00 PM	2 00	$ 83	night	Wm O Clatz ✓
SEP 17 1936	STEAMER WINDSOR WABASH RY.	10 30 PM 6 00 PM	2100	$ 83	night	E. J. Mitchell ✓
SEP 18 1936	STEAMER WINDSOR WABASH RY.	9 30 PM 6 00 PM	2100	$ 83	NIGHT	H Gilligan ✓
SEP 19 1936	STEAMER WINDSOR WABASH RY.	7:15 PM 2 00 AM	2100	$ 92	NIGHT	H Gilligan ✓
SEP 20 1936	STEAMER WINDSOR WABASH RY.	8 00 AM 8:00 AM	2100	8 75	NIGHT	M J Shefferly ✓
SEP 20 1936	STEAMER WINDSOR WABASH RY.	5:00 PM	2100	11 66	SUNDAY	H Gilligan ✓
SEP 20 1936	STEAMER WINDSOR WABASH RY.	5:00 PM 6:00 AM	2100	$ 83	NIGHT	H Gilligan ✓
SEP 21 1936	STEAMER WINDSOR WABASH RY.	7:30 PM 2:00 AM	2100	$ 83	NIGHT	M J Shefferly ✓
SEP 22 1936	STEAMER WINDSOR WABASH RY.	8:00 AM 6:00 PM	2100	8 25	[illegible]	[illegible] ✓
SEP [illegible] 1936	WABASH RY. STEAMER WINDSOR	7:50 PM 5:00 AM	2100	$ 92	NIGHT	M J Shefferly ✓
SEP 27 1936	WABASH RY. STEAMER WINDSOR	5:00 PM 5:00 AM	2100	11 66	SUNDAY	M J Shefferly ✓
SEP 28 1936	WABASH RY. STEAMER WINDSOR	7:35 PM 6 PM	2100	$ 92	NIGHT	M J Shefferly ✓
SEP 29 1936	WABASH RY. STEAMER WINDSOR	8:30 PM 6:00 AM	2100	$ 92	NIGHT	H Gilligan ✓
SEP 30 1936	WABASH RY. STEAMER WINDSOR	7:35 PM 6:00 AM	2100	$ 92	NIGHT	M J Shefferly ✓

Customs Form 3041
(Revised April 1, 1932)

Amended
ORIGINAL OR DUPLICATE

APPLICATION AND PERMIT (MONTHLY) TO LADE OR UNLADE MERCHANDISE, BAGGAGE, OR PASSENGERS AND FOR OVERTIME SERVICES

UNITED STATES CUSTOMS SERVICE

DISTRICT NO. 38 PORT OF Detroit August 28, 1936

To the COLLECTOR OF THE PORT:

Sir: Bond or security having been given as required by law, application is hereby made for the lading or unlading, either in day or night other than official hours, of merchandise, baggage, or passengers on or from the vessels, lighters, cars, or other conveyances of the

Wabash Railway Company at **Detroit, Michigan** from **September 1**

1936, to **September 30** 1936, (Not to exceed ONE MONTH) immediately after the arrival of such vessels or other conveyances at the place named, and before or after regular entry at the customhouse, and/or for the services of customs officers and employees in connection with such lading or unlading or the entry or clearance of the vessels, or the issuance of their marine documents or recording of instruments of title.

It is hereby agreed that all cargo discharged under this application shall remain upon the wharves or other places of unlading until cleared by permits therefor or removed in conformity with the terms of the regular general order permits, to be issued after entries of the vessels at the customhouse, and that the said vessels and their owners shall be held liable for all duties which may be found to be due the Government on account of any portion of the cargo lost or stolen from the wharves after being discharged from the vessels and before released by proper delivery permits or removal under the general order permits; and, furthermore, that the liability to the owners of any portion of the cargo and responsibility for its care shall not be impaired, nor affected by any proceedings under this application.

Employees required: 8 Inspectors

Bond for: **Overtime** dated **March 1** 1936 (Show if known: Inspectors, examiners, weighers, gaugers, samplers, laborers)

Amount of deposit, $

Verified by [redacted] Address [redacted]

Superintendent

To CUSTOMS OFFICER CONCERNED: **PERMIT (LICENSE)** (Do Not Write)

Application approved and permit (license) granted. This permission will not become available, however, until after the proper manifest and other required customs documents shall have been delivered to the proper customs officers and no part of the cargo unladen shall be moved from the wharf, lighter, or other place of unlading before the issuance of proper permits therefor. You will assign the necessary employees.

AUG 19 1936, 193[illegible]

Deputy Collector

Station No. [redacted] **STATEMENT OF SERVICES RENDERED** Rate [illegible]

We, the undersigned, certify that the statement of services rendered noted opposite our respective names is correct and true.

Date	Vessel, Etc.	Time Employed	Rate of Pay	Amount Earned	Name of Officer	Signature of Officer
	WABASH ST.	6 to 8 PM				
SEP 2- 1936	STEAMER WINDSOR	7 to 8 PM	2100	x 92	Night	C. L. [illegible]
	WABASH ST.	6 to 8 PM				
SEP 3- 1936	STEAMER WINDSOR	6-7 PM	2100	x 92	night	W. D. [illegible]
	WABASH ST.	6 to 8 PM				
SEP 4- 1936	STEAMER WINDSOR	6 to 7 PM	2100	x 92	night	W. D. [illegible]
	WABASH ST.	8:00 AM				
SEP 6- 1936	STEAMER WINDSOR	8 to 9 AM	2100	8 75	night	W. D. [illegible]
	WABASH ST.	8 to 9 AM				
SEP 6- 1936	STEAMER WINDSOR	5-6 PM	2100	[illegible]	Sunday	J. Harriman
	WABASH ST.	5 to 6 PM				
SEP 6- 1936	STEAMER WINDSOR	6 to 7 PM	2100	x 92	Night	C. J. Harriman
	WABASH ST.	2:00 AM				
SEP 7- 1936	STEAMER WINDSOR	2:00 AM	2100	8 75	night	W. D. [illegible]
	WABASH ST.	8 to 9 AM				
SEP 7- 1936	STEAMER WINDSOR	5 to 6 PM	2100	11 66	Sunday	J. Harriman
	WABASH ST.	5 to 6 PM				
SEP 7- 1936	STEAMER WINDSOR	6 to 7 PM	2100	x 92	Night	C. J. Harriman
	WABASH ST.	2:00 AM				
SEP 13 1936	STEAMER WINDSOR	2:00 AM	2100	8 75	night	W. D. [illegible]
	WABASH ST.	6 to 8 PM				
SEP 19 1936	STEAMER WINDSOR	6 to 8 PM	2100	11 66	Sunday	H. J. [illegible]
	WABASH ST.	6 to 8 PM				
SEP 13 1936	STEAMER WINDSOR	6 to 7 PM	2100	x 83	Night	[illegible]

(Signature of Officer)

turned in by the Inspectors who performed services,
131 such slips being mimeographed forms furnished by the Collector's office, a copy of which mimeographed form is annexed hereto marked Exhibit "A", and made a part hereof.

(S) FRANCIS M. SHEA,
Assistant Attorney General.
(S) ROBERT M. DRYSDALE,
Attorney for Plaintiffs.

Dated January —, 1942.

132 *Exhibit A*

Detroit, Michigan_____
(Date)

THE COLLECTOR OF CUSTOMS, *Detroit, Michigin.*

SIR: In addition to my regular tour of duty from_____M. to_____M., I have performed the following overtime (Night, Sunday, holiday) service for the_____
(Transportation company)
_____on board the steamer, train_____
From_____M. to_____M., on_____to the amount of
(Date)
$_____. My salary is $_____per annum. Fee collected_____.
(Yes or No)

Approved:

_____
Inspector

_____
(Master of Steamer)

135 *Portions of the record which the plaintiffs deem material to the errors assigned*

JOHN H. ARBLE

Page 3:

14. Q. What was your salary during that period of time?
A. Twenty-one hundred dollars basic pay per annum.

Page 4:

18. Q. Will you state at what stations such services were performed?

A. As outlined in my schedule, Detroit and Windsor Ferry, Walkerville Ferry, Detroit and Canada Tunnel, Ambassador Bridge, M. C. Railroad Tunnel, Wabash Ferries, Grand Trunk Slip Dock, and the Miller Ferry Line of St. Clair, Michigan.

The COURT. Are there two tunnels under the river here?

A. No, sir—yes; there is one freight tunnel, a railroad tunnel; Michigan Central has a railroad tunnel.

The COURT. That is just the railroad.

A. Connects railroad lines in Canada with those in the United States.

The COURT. And the Detroit and Canada tunnel is what?

A. Vehicular.

The COURT. When was the railroad tunnel constructed?

A. I am not positive; 1914 I believe.

The COURT. It was before the vehicular tunnel some time?

A. Yes sir.

The COURT. All right.

Page 5:

19. Q. Please tell us what is the Detroit and Windsor Ferry?

A. International ferry-boat between Windsor, Ontario, and Detroit, Michigan.

20. Q. During the time embodied in your statement did that ferry service work twenty-four hours a day?

A. No, sir.

136 21. Q. During what hours did it work?

A. Originally the hours were from 5 till 2 A. M.; 5:30 A. M. until 2:00 A. M. the following morning.

22. Q. Was traffic more or less continuous during those hours on that ferry line?

A. According to the schedule of the ferry business.

23. Q. There was more than one boat; was there not?

A. Yes, sir; the service varied from ten minutes upwards per boat docking.

24. Q. And that ferry system served to carry passengers, baggage, merchandise, from Windsor, Ontario, to the city of Detroit?

A. Yes, sir.

The COURT. The other way, too?

A. Yes, sir.

25. Q. What is the Walkerville Ferry, referred to in the schedule?

A. An international ferry connecting Walkerville, Ontario, with Detroit.

26. Q. Was there continuous service over that ferry line during the time covered by your statement?

Page 6:

A. Yes, sir; with the exception of a few hours in the A. M. from 2:00 until 5:30—approximately those hours.

The COURT. Give the hours again.

A. Approximately from 2:00 to 5:30 there was no operation.

The COURT. That is the same as the Detroit-Windsor?

A. Yes, sir.

The COURT. It would operate from 5:30 in the morning until 2:00 A. M. the next day?

A. Yes, sir.

27. Q. And what came over on those ferries from Walkerville to Detroit?

A. Foot passengers, vehicular traffic, commercial buses, commercial importations on trucks.

28. Q. I am speaking of the Walkerville Ferry.

A. There were no buses. Pedestrian traffic, vehicular traffic, and commercial importations.

29. Q. Did merchandise come over on that ferry?

A. Yes, sir.

30. Q. On the trucks?

A. Yes, sir.

187 31. Q. Did merchandise come over that wasn't loaded on trucks?

A. Yes, sir; people would carry it and it would be assessed duty.

Page 7:

43. Q. What is the Michigan Central Tunnel?

A. It is a railway tube under the Detroit River between Windsor, Ontario, and Detroit.

44. Q. Has that ever been closed?

A. It has never been closed except by a wreck, but it has never been closed officially to business.

45. Q. Was there continuous service through that tunnel?

A. Yes, sir.

The COURT. That is the railroad?

Mr. DRYSDALE. That is the freight tunnel.

46. Q. Did that tunnel carry both passenger and freight trains?

A. Yes, sir; anything that runs on wheels on a railway came across provided the head clearance is right.

47. Q. Was service required at that tunnel twenty-four hours a day?

A. Yes, sir.

Page 10:

61. Q. When was the Ambassador Bridge opened?

A. November 1929.

62. Q. The Detroit-Canada Tunnel, when was it opened?

A. One year later; November 1930.

63. Q. All of these stations that have been described by you were open and operating during all of the time covered by your statement, your bill?

A. Yes.

64. Q. The Detroit and Windsor Ferry is an old established line; is it not?

A. Yes, sir. Over fifty years I believe it has been in operation.

Page 13:

Page 85:

Q. So that the Michigan Central Railway Company had two sets of inspectors working?

A. Yes, sir.

138 86. Q. One in the freight yard and one in the passenger station?

A. Yes, sir.

Page 14:

88. Q. That is, it was customary for the customs inspector serving the passenger traffic at the Michigan Central to get paid for this nighttime, Sunday and holiday services during this period?

A. No, sir; I didn't say that.

89. Q. Not nighttime; I mean Sunday and holiday services?

A. Yes, sir.

90. Q. But not nighttime service?

A. No, sir; not at the passenger station.

91. Q. But they didn't pay for nighttime, holiday or Sunday services in connection with the handling of freight?

A. No, sir.

92. Q. Is that right?

Page 15:

A. Yes, sir.

Page 26:

149. Q. Now did you understand when you received your temporary appointment that if you worked on a Sunday or a holiday that you would get compensatory time during the week off for that period?

A. There was no understanding made.

150. Q. As a matter of practice from the time that you had your temporary appointment were you given one day compensatory time during the week for the time on Sunday?

A. I don't know whether it was a matter of practice or not. That is what happened.

151. Q. Well now has there been any change in it from the time you started there down to the present time, in giving that one day of compensatory time for eight hours service?

A. Not that I remember.

Page 27:

154. Q. And isn't it pretty well established and known by all you inspectors that if you worked an eight-hour tour of duty on a

holiday or a Sunday that you got one day compensatory time during the week?

139 A. It would be insubordination not to take the day off.

155. Q. Don't let's fence; all that the Government wants in these cases is just what the facts are. We want the court to have the facts and the court can decide this question of law which has been raised. But it has been my understanding that every inspector who served an eight-hour tour of duty on holidays and Sundays was given and took a day off during the week?

A. He was given no choice.

Mr. DEYSDALE. We will concede that on the record.

Mr. STALEY. Then why doesn't the witness answer?

A. He was given no choice; he had to take it.

156. Q. And when Saturday afternoon became a holiday he was given compensatory time for any time that he served Saturday afternoon?

A. At some later date.

The COURT. If you were off Saturday, worked Saturday afternoon and Sunday, in the following week would your superior tell you to take this day and a half off?

A. Not always; sometimes the day off for that would come three months after that time.

The COURT. But you would get notice from your superior when to take the day?

A. It would be scheduled in your working hours.

The COURT. Who schedules it?

Page 28.

A. The officer in charge of your station.

The COURT. All right.

157. Q. And at the time you started there was a schedule provided what your tour of duties would be for a period?

A. Generally in advance one or two weeks.

158. Q. And that practice has been followed ever since?

A. Without exception.

159. Q. And the schedule covers the time off which we call compensatory time?

A. It provides compensatory time.

160. Q. For the inspectors?

A. Yes.

140 Page 30:

170. A. Yes, sir; there are overloading periods when the traffic is heaviest and it necessitates the major part of the inspection hours.

Page 31:

177. Q. And at all times they are divided into eight-hour shifts?

A. Yes, sir; eight hours work done by each man.

178. Q. And where they work on Sundays or holidays or Saturday afternoon they receive compensatory time during a week day?

A. That has been the practice here at Detroit.

179. Q. And those conditions have existed ever since you joined the service?

A. They were in effect when I joined the service.

Page 36:

By Mr. DRYSDALE:

R. D. Q. 204. Q. The compensatory time off which has been granted you for your nighttime, Sunday and holiday services is the same amount of time, is it not, that you worked? I will make it plain: if you worked during the nighttime for eight hours, what would be the amount of your compensatory time?

A. The number of hours have been identically the same.

Page 37:

205. Q. In other words, they didn't give you more hours off than the number of hours you worked?

A. No, sir.

Page 55:

12/17/41

D. 28. Q. Name the car ferries. You say, the car ferries. Name them, please.

A. The Pere Marquette Railroad car ferry, the Wabash car ferry, the Grand Trunk car ferries.

29. Q. What was the practice at those car ferries that you have just named, with respect to payment for extra compensation for Sunday and holiday service, prior to 1931?

A. There was never any change in the practice. It was paid prior to that.

141 Page 58:

38. Q. When you performed services on Sundays and holidays, at the car ferries, did you always get extra compensation for that?

A. Yes.

39. Q. Now, when you performed services other than at the car ferries, on Sundays and holidays, and for which extra compensation was paid as you have testified to, upon what was such payment conditioned?

A. That I was requested to work.

40. Q. When?

A. During the 24-hour period that constituted the Sunday or the legal holiday.

Page 96:

R. D. Q. 180. Q. When you were paid extra compensation for Sunday and holiday services, was such payment for work on a Sunday or holiday or extra time?

Page 97:

A. Well it was because I worked Sunday or a holiday, because I came to work that day, took that day, which was my own, and performed services on that Sunday or legal holiday.

R. D. Q. 182. Q. What did you mean by "your own"? You used the words, there, "your own." What do you mean by that?

A. It has always been held by law and all the congressional committee hearings on this Customs, that Sundays and nights were the man's own time.

R. D. Q. 184. Q. What do you mean by "my time," in that answer?

A. Sundays and holidays were considered days that we would have off, I would have off for my own enjoyment or recreation or religious convictions, or whatever I wished to devote them to.

Page 133:

D. 1. Q. Referring again, Mr. Arble, to the car ferries, I ask you if, when you served a regular tour of duty at the car ferries, on a Sunday or a holiday, you were paid extra compensation?

A. Yes.

142 Page 136:

R. D. Q. 13. Mr. Arble, regarding exhibit Govt. R–A. just introduced by Mr. Staley, I will ask you where or in what cases that form was used in practice at Detroit?

A. In the period covered by this litigation, at the P. M., and Wabash Railroads. This form wasn't signed and certified to by the inspector in each instance of work. There were a good many sent to the main office, and there the entries were made on a voucher which he certified to. For special services, unlading vessels and outside services, where there was individual assignment each time, then this form was certified on the completion of the work, or the entry was made upon it for that particular work.

By Mr. STALEY:

R. D. Q. 14. Who prepared that memorandum, in order to have it right in here? Did the inspector prepare it?

A. The individual inspector.

By Mr. DRYSDALE:

R. D. Q. 15. What memorandum do you refer to now?

A. Merely a mimeographed form, with a simple statement, "I have performed the hours of duty from (blank) to (blank) on such a date, at the (blank) company or vessel," and sign your name to it.

R. D. Q. 16. That was sent to the main office?

A. That was sent to the chief inspector's office. I don't know what disposition was made, clerically.

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HARRY N. STRINGER

Page 129:

By Mr. STALEY:

2. Q. How long have you been attached to the Collector of Customs Office in the District of Detroit?

A. Since June 1908.

3. Q. Starting with the period from 1920 on, will you please state what your respective assignments have been down to the present?

A. The positions that I have held?

4. Q. Yes; from 1920 down to the present.

A. I was inspector in charge of the Detroit and Windsor Ferry until September, 1925. I was inspector in charge at the Michigan Central Tunnel from September 1925 until May 3, 1926, and since then I have been Chief inspector.

5. Q. And as chief inspector did your duties include services at all the various stations in the Detroit Customs District?

A. I supervised the work of all the different stations and visited them almost daily.

6. Q. Prior to your appointment as chief inspector were you familiar with the other stations, the hours of duty and so forth?

A. Yes; I was.

7. Q. Since the Ambassador Bridge has been opened have the assignments of men to duty been under the direction of your office?

A. Yes.

8. Q. Prior to the opening of the Ambassador Bridge had the matter of compensatory time off for Sundays and holidays been in practice at Detroit?

A. No.

9. Q. And the practice, then, has been since the Ambassador Bridge was opened?

A. Yes.

144 Page 132

18. Q. When the Ambassador Bridge was opened, please state the practice which was adopted covering 8-hour tours of duty for both weekdays, Sundays and holidays, and the method of assignment of the inspectors to service during such tours of duty.

A. The method that was in practice then was that if they worked on Sundays or holidays, they should have some day off the following week.

20. Q. Which has been stated to be compensatory time?

A. Yes.

21. Q. I think probably I can approach it with a little more directness in this way. When the Ambassador Bridge was opened, what was the practice at the Ambassador Bridge with respect to the assignment of inspectors to 8-hour tours of duty on Sundays and holidays, and how was the time which they spent on Sundays and holidays compensated for?

A. If they worked eight hours during Sundays or holidays, they got eight hours off sometime later for it.

22. Q. Were the men assigned to regular 8-hour tours of duty?

A. Yes.

By Commissioner RAMSEYER:

23. Q. You said "sometime later." You mean on weekdays?

A. Yes; some weekdays; yes, sir; within the next week or two.

CORRECTION OF APPELLANT'S REQUESTED TESTIMONY

STRINGER—September 28, 1938

100. Q. For how many days?

A. Seven days a week.

145 Page 138:

37. Q. Prior to the opening of the Ambassador Bridge, what was the practice with respect to the Walkerville Ferry and the Detroit and Windsor Ferry?

A. They paid overtime for Sundays and holidays.

Page 142:

56. Q. And did that practice of compensation being paid at these two ferries by the carriers for Sundays and holidays, prior to the opening of the Ambassador Bridge, cover the period from 1920 down to 1929?

A. Yes, sir.

58. Q. What was the practice at the time of the opening of the Ambassador Bridge, and since, with respect to the assignment of inspectors at the Michigan Central Tunnel?

A. They are assigned to 8-hour shifts, which cover the twenty-four hours, and are given compensatory time off for Sundays and holidays.

59. Q. The practice therefor, at the tunnel, is also the same as that at the Ambassador Bridge?

A. Yes, sir.

60. Q. When was that practice adopted at the Michigan Central Tunnel?

A. At the same time that it was adopted at the Bridge.

61. Q. And prior to the opening of the bridge, what was the practice at the Michigan Central Tunnel?

A. They worked every day, 7 days a week, without compensatory time and without overtime.

62. Q. Seven days a week would mean how many hours a week?

A. Fifty-six hours a week.

63. Q. How many additional hours' pay did they receive, then, for that week?

A. Prior to 1929?

64. Q. Yes. Strike that question out. It isn't intelligible. What was the regular number of hours for a week at that time? Did it cover 6 or 7 days?

A. Seven days.

65. Q. At this bridge?

A. Prior to 1929.

146 P. 143:

66. Q. Was there any overtime payment made to the inspectors at the Michigan Central Tunnel prior to 1929?

A. Yes, sir.

67. Q. Please state what period of overtime they were paid for?

A. Well, starting in 1920—I am not familiar with the exact dates—the Michigan Central Tunnel, to the best of my belief, paid overtime for about two years, and then they suspended payment of overtime for three or four years. Then there was a decision rendered that they had to pay it, and they paid up all that back overtime, and if I remember right they started to pay overtime again and paid overtime until sometime in 1928, when it was suspended again. Then they worked 7 days a week until November, 1929, when we started giving a day off for Sundays and holidays.

P. 146:

83. Q. Now, between 1928 and 1929, what was the practice there at the Michigan Central Tunnel?

A. If I remember right, they worked 7 days a week.

84. Q. Did the carrier pay any part of the 7 days a week?

P. 147:

A. Not for that period. Not to the best of my knowledge he did not.

85. Q. They did not? Well, that covers, does it not, the matter of the work at the Michigan Central Tunnel, fully, you think, during the period?

A. Yes, sir.

86. Q. After 1919–29 or 1928—let me keep myself straight here—you say they worked how many hours at the Michigan Central Tunnel?

A. Prior to 1929?

87. Q. No.

A. Since 1929?

147 88. Q. Let me state the question again. You say the practice was changed in 1928? Did you or did you not?

A. The payment of overtime or compensation for Sundays and holidays, if I remember right, was discontinued some time in 1928.

89. Q. And what number of hours were the men regularly assigned to at the Michigan Central Tunnel in 1928, up to the time that the Ambassador Bridge was opened?

A. They were staggered 8-hour shifts, covering the 24 hours, 7 days a week.

90. Q. And the compensation for the 7 days a week—who paid the compensation for 7 days a week. Who furnished the money? Where did the money come from for that compensation for 7 days a week?

A. That was regular Government salary.

91. Q. And was paid on the basis of the salary?

A. Yes, sir.

P. 148:

92. Q. Were they paid anything in addition to their regular per diem rate?

A. No, sir.

93. Q. That practice, you say, was changed in 1929. Then the same practice was adopted at the Ambassador Bridge?

A. Yes, sir.

P. 159:

117. X Q. Mr. Stringer, these inspectors at Detroit never collected pay for their night overtime, Sunday or holiday services from the carriers, did they, direct?

A. No, sir.

118. X Q. They were always paid by the Government?

A. Yes, sir.

119. X Q. And the inspectors themselves had nothing to do with the collection of their extra compensation from the carrier?

A. They did not.

148 Page 160:

120. X Q. Mr. Stringer, you have testified that at the time of the opening of the Ambassador Bridge at Detroit, there was a change put into effect regarding the payment of extra compensation to inspectors. Now, prior to that time they were paid in cash for night time, Sundays, and holiday services, were they not?

A. For Sunday and holiday service; not for nighttime services?

Page 161:

121. X Q. Not for night service?

A. Not for night service on week days.

122 X Q. Are you sure of that?

A. Yes, sir.

123 X Q. But when the bridge was opened up, they were paid after that by making allowance for compensatory time?

A. Yes, sir.

124 X Q. Is that right?

A. Yes, sir.

Page 162:

132 X Q. So that your testimony regarding the services at the Michigan Central Tunnel applies only to the freight service?

A. Yes, sir.

133 X Q. And not to the passenger service?

A. No, sir.

134. X Q. Well, did the inspectors at the Michigan Central Tunnel from 1928 to 1929, in the passenger service, get pay either in cash or compensatory time for Sunday and holiday services?

A. Yes, sir; they did.

135 X Q. Do you know whether that was paid in cash?

Page 163:

A. It was paid in money.

149 136. X Q. You can't account, can you, for any reason why there should be any differentiation between the passenger service and the freight service? Why one should be paid and the other should not?

A. An order from the Department, or from the Collector to me.

137 X Q. You were just obeying orders received from your superior?

A. Yes, sir.

138. X Q. After the opening of the Ambassador Bridge, the inspectors at the Wabash Ferry, the P. M. Ferry, and the Grand Trunk Slip Dock still continued to be paid in money?

A. Yes, sir.

139 X Q. For Sunday and holiday services?

A. Yes, sir.

140. X Q. And are still so paid?

A. Yes, sir.

141. X Q. How about night time services at those three places? Are they paid for that in time or money?

A. No, sir; they are paid their regular government salary.

142 X Q. So that from the time of the opening of the Ambassador Bridge down to the present time at the Port of Detroit inspectors who work on Sundays and holidays at the P. M. Ferry, the Grand Trunk Slip Dock and the Wabash Ferry get paid in money for their Sunday and holiday service?

Page 164:

A. Yes, sir.

143. X Q. But they do not get paid in money at the Ambassador Bridge?

A. No, they do not.

144. X Q. Nor have they been paid in money at the Detroit and Windsor Ferry?

A. They have not.

145. X Q. But at the Detroit and Windsor Ferry and the Ambassador Bridge they have been compensated for Sunday and holiday service by allowance of compensatory time?

A. That is correct.

150 Page 164:

146. X Q. Now, the services to be performed by inspectors at the Wabash Ferry, the P. M. Ferry, and the Grand Trunk Slip Dock cover a period of 24 hours a day, do they not?

A. Except the Grand Trunk slip dock. That goes from 7 A. M. until 1 A. M. the next morning.

147. X Q. But the other two stations the service there is required 24 hours a day.

A. Yes, sir.

148. X Q. And on the Grand Trunk slip dock, 18 hours a day or thereabouts.

A. Yes, sir.

149. X Q. At the Grand Trunk slip dock, the service there was 24 hours per day until a year ago? It that right?

A. That's right.

150. X Q. So that with the exception of the past year at the Grand Trunk slip dock, the hours of service at those three railroad ferries—I mean the Detroit and Windsor Ferry and the Ambassador Bridge, they were all 24 hours a day?

A. Yes, sir.

151 WALTER S. PETTY

9/28/38

Page 174:

43 Q. Is that work at those four stations where extra compensation is paid by the carrier, in addition to the regular week day 8-hour tour of duty?

A. I don't believe I quite understand that question, Mr. Staley.

Page 176:

50. X Q. Mr. Petty, you don't mean to infer, do you, that the reason that the inspectors are paid in money at these railway ferry docks for services at the railway ferry docks is because you have not a sufficient number of inspectors to give them time off?

A. Well, we have never had a request from those ferry companies, those car ferries, to be relieved from the payment of that extra compensation, but if we did——

51. X Q. Mr. Petty, I want an answer to the question.

Mr. STALEY. Wait a minute. Let him answer the question.

Commissioner RAMSEYER. Repeat the question and answer the question as nearly as you can.

(The reporter read the question as follows:)

"50. X Q. Mr. Petty, you don't mean to infer, do you, that the reason that the inspectors are paid in money at these railway ferry docks for services at the railway ferry docks is because you have not a sufficient number of inspectors to give them time off?"

By Commissioner RAMSEYER:

52. X Q. Do you know the reason why? If you do, state that.

A. We have never had a request from those carriers to relieve them——

53. X Q. Is that the reason why? Go ahead. I thought you were through with your answer.

152 Page 177:

A. (Continuing.) To be relieved from the payment of that extra compensation. If they made that request to us to be relieved——

Mr. DRYSDALE. I don't want conclusions that the witness may make.

Commissioner RAMSEYER. I think you have answered the question.

Mr. STALEY. No; I object. I ask that the witness be permitted to answer the question. He has been stopped in both answers.

Commissioner RAMSEYER. Well, you can take it up on redirect.

By Mr. DRYSDALE:

54. X Q. In any event, the inspectors performing Sunday and holiday service at those railway docks have been paid in money for their Sunday and holiday services through all the period covered by these petitions; namely, from 1931 to 1937?

A. That is correct.

Mr. STALEY. You mean money or checks.

Mr. DRYSDALE. Well, money or checks. They are both the same when you get a collector's check.

Mr. STALEY. I know, but you have made a distinction between cash and checks.

Mr. DRYSDALE. Well, meant the distinction to be made between money and compensatory time.

Mr. STALEY. That is all right, then; just so it is understood.

Page 201:

175. R. X Q. Now, at the present time over on the P. M. dock, where the Pere Marquette trains come to the Port of Detroit and overtime services of inspectors is required, isn't it the practice with respect to the Pere Marquette that such extra services are supplied by sending down an inspector from the Ambassador Bridge to work there a few hours and then have that inspector complete his eight hours back at the Ambassador Bridge?

A. Yes.

153 Page 202:

176. R. X Q. That saves the Pere Marquette Railroad the liability for paying for the overtime or extra time?

A. That is a matter we have already discussed with the Department as to whether or not we were right in making that ruling.

177. R. X Q. I am not questioning the legality of it, nor your position in the matter. I just wanted to get the fact that that is being done. That is a typical instance, when a car ferry on the P. M. is going back and forth and the customs inspector has been there for, say 8 hours, and they want to work a couple of hours more, instead of obtaining the services of an inspector at that dock and paying him for the extra two hours, you send down an inspector from the bridge or some other place to work the two hours, and then complete his eight hours back to his other station?

A. That is right.

178. R. X Q. In order that the record may be complete, is that the same practice on Sundays and holidays in the Customs Service?

A. Well, if it was on Sundays and holidays these men would get extra compensation for that.

154 BYRON E. REDDICK

Page 43:

1. Q. When were you appointed a customs inspector, Mr. Reddick?

A. In May 1926.

2. Q. Did you take the oath of office at that time?

A. I did.

3. Q. Were you a customs inspector at the Port of Detroit in November 1929?

A. Yes, sir.

4. Q. That is, from 1926 to November 1929 you were stationed at Detroit?

A. Yes, sir.

5. Q. Do you recall the opening of the Ambassador Bridge?

A. I do.

6. Q. That is the Ambassador Bridge referred to by Mr. Arble in his testimony?

A. It is the only one.

7. Q. When that bridge was opened was there any change made in the basis for night time, Sunday, and holiday services of inspectors at the City of Detroit?

A. Overtime was discontinued.

8. Q. Was any reason assigned for it that you know?

A. None except adjudged to be a discrimination between the ferry and the bridge.

Page 46:

By Mr. STALEY:

11. Q. Now prior to 1929 the only tour of duty that was assigned to inspectors by the Detroit office was an eight-hour tour of duty; is that correct or not?

A. That was correct; it might vary slightly; for instance, they might run an extra boat on two ferries, but in that case that was ignored and we didn't pay any attention to it.

12. Q. But your regular tour of duty was limited to eight hours a day?

A. That's right.

13. You had no regular tour of duties on holidays or Sundays; I am speaking of prior to 1929?

A. We were assigned to the same hours, yes; from the opening of the ferry, with staggered shifts; I didn't have any—they would assign me perhaps from 5:00 in the morning——

The COURT:

155 Page 47:

He is asking you before 1929, before the Ambassador Bridge was opened you had regular tours of duty?

A. Yes, sir.

The COURT. And when Sunday came and they wanted you for a few hours, they sent you out, did they, on Sunday?

A. On Sunday we were assigned just the same as on the other days of the week.

The COURT. All right.

By Mr. STALEY:

14. Q. Well now, did you have a regular tour of assignment for which you received only your pay, when you worked Sundays and holidays?

A. Well on Sundays and holidays we received two days' pay, no matter what hours we worked, just as long as we put in the eight hours.

Page 51:

37. Q. Yes; the regular tour of duty that you were assigned to prior to 1929?

A. That was presumably an overtime collection on the Sundays and holidays.

38. Q. You were given no regular assignment or tour of duty on Sundays or holidays or after 5:00 o'clock at night?

A. We were scheduled exactly the same way as we were the other days of the week.

Page 54.

R. D. 57. Q. Mr. Reddick, prior to the opening of the Ambassador Bridge how many hours a day were the customs inspectors at Detroit liable to be called to service?

A. Well it was my understanding that you could be called out at any time that they demanded your services and needed them any part of the twenty-four-hour day.

R. D. 58 Q. Mr. Arble has testified here that at the Detroit and Windsor Ferry Company there was continuous service there during the whole twenty-four hours except from 2:00 to 5:00 or 5:30 in the morning?

A. That was right, I believe.

156 Page 54:

R. D. 59. Q. Is that right?

A. That's right.

Mr. STALEY. You were stationed there, were you?

A. Yes, sir.

R. D. 60. Q. Were customs inspectors stationed at those ferry docks during all the time the ferries were running?

A. Yes, sir.

R. D. 61. Q. And tours of duty were assigned to that service just like they were at the Ambassador Bridge subsequently, were they not?

Mr. STALEY. Now do you know, first of all?

A. Yes; tours of duty were scheduled there for eight hours; they could be staggered from the time they opened in the morning until such period as gave them their eight hours afterwards.

R. D. 62. Q. Their tours of duty there before 1929 were eight hours staggered so that the whole time the ferry was running would be covered?

A. That's right.

By Mr. DRYSDALE:

R. D. 63. Q. How many hours a day was service maintained by the customs inspectors at the Walkerville Ferry prior to the opening of the Ambassador Bridge?

Mr. STALEY. Do you know? Were you there?

A. 5:30 to 1:30—I beg pardon; I wasn't at the station at that time.

R. D. 64. Q. You know when these ferries ran up there, don't you?

A. I couldn't state at that date because they may have changed the schedule.

R. D. 65. Q. But you do know about the Detroit and Windsor ferry?

A. I do.

R. D. 66. Q. How about the Michigan Central Tunnel? How many hours a day was service provided there?

A. I am not conversant with that at any time during the time mentioned here.

R. D. 67. Q. I mean prior to 1929?

A. That was twenty-four hours continuous service there, at the Michigan Central Railway tunnel.

Mr. STALEY. You don't know who paid for that service?

A. I do not.

157 Page 55:

R. D. 68. Q. How about the Wabash ferries; how many hours of service per day?

A. Beg your pardon; we had a Government check on that from the collector signed by the collector; who paid I don't know.

Page 56.

R. D. 69. Q. How about the Wabash ferries? How many hours a day was that?

Mr. STALEY. Were you at the Wabash ferries prior to 1929?

A. Yes; and we had continuous service on some of the boats down there at that time, and some of them would work perhaps two eight-hour shifts, and they would be assigned the eight hours throughout that time.

R. D. 70. Q. How about the P. M Railway ferries?

A. Exactly the same

R. D. 71. Q. You were there?

A. I worked at the P. M.; yes.

R. D. 72. Q. Prior to 1929?

A. Yes, sir.

R. D. 73. Q. Would that be continuous service during the day there?

A. They had spasmodic service; sometimes they would run continually the twenty-four hours if business justified; otherwise they would shorten down.

The COURT. The ferries are not in this case.

Mr. DRYSDALE. They are in one of the others. The P. M. is not in this Arble case.

By Mr. DRYSDALE:

R. D. 74. Q. Were you called to service by the carriers or by the collector of customs?

A. We were called by the collector because the carriers never called us.

R. D. 75. Q. You had nothing to do with the carrier's requests for services, did you?

Page 57:

A. Not at all; we received our notification through the office.

R. D. 76. Q. Did you ever get paid direct from the carriers for these services?

A. No, sir.

Mr. STALEY. You mean you didn't get the checks of the carriers?

158 Page 57:

A. We didn't get any checks from the carrier, or money.

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Page 120:

D. 14. Q. Since you entered the service, at what stations in Detroit was extra compensation paid for Sunday and holiday service?

A. That is since I entered in 1926?

D. 15. Q. That is right.

A. The car ferries.

D. 16. Q. Will you enumerate them for the record?

A. The Wabash and Pere Marquette car ferries, and I went from there up to the old——

D. 17. Q. At the Grand Trunk?

A. I did not work at the Grand Trunk.

D. 18. Q. I am not asking where you worked.

A. You mean the different places?

D. 19. Q. Yes. What do you mean by the "car ferries?". That is what I want to know.

Page 121.

A. All right. There were the Wabash and the Pere Marquette, Grand Trunk car ferries, and the passenger and automobile ferries at Walkerville, and the now defunct Windsor ferry, and at the Michigan Central Station; and they paid also at the different warehouses; bonded warehouses.

By Commissioner HOBBS:

D. 20. Q. When you speak of Sunday and holiday service, do you refer only to the time between 8 a. m. and 5 p. m., on Sundays and holidays?

A. No. Put that question again please.

D. 21. Q. When you refer to Sundays and holidays, do you refer only to time on Sundays and holidays between 8 a. m. and 5 p. m.?

A. Yes, sir. That is right.

By Mr. DRYSDALE:

D. 22. Q. Was there any change in the practice at the car ferries since you entered the service?

A. No; not that I know anything about.

D. 23. Q. There was a change at some of the other stations, was there not?

A. Yes.

D. 24. Q. But from the time you entered the service, as I understand your testimony it is that the custom was to pay extra compensation at the car ferries for Sunday and holiday service?

159 Page 122:

A. That is right.

D. 25. Q. Now, when extra compensation was paid for Sunday and holiday services at the car ferries, was it required that the officers first serve their regular contract hours of duty, before receiving such extra compensation?

A. No, he only worked his eight hours.

Commissioner HOBBS. That is not very clear, counsel. It seems to me the answer and the question taken together are not very clear.

(25. Q., and the answer thereto, were read by the reporter.)

Commissioner HOBBS. "He only worked his eight hours," when?

By Mr. DRYSDALE:

D. 26. Q. Will you be more specific on that, and try to answer that question specifically?

A. Well——

D. 27. Q. I will put it another way.

A. Perhaps it would be better.

D. 28. Q. I beg pardon?

A. I say, perhaps it would be better.

D. 29. Q. Whenever Sunday or holiday services were performed at the car ferries, was extra compensation paid for it?

A. Yes.

D. 30. Q. And before the officer became entitled to that compensation, did he have to work actually excess hours, or not?

A. You mean, work in——

Page 123:

Mr. STALEY (interposing): That doesn't mean anything. I object to it.

Mr. DRYSDALE. Repeat the question, and see if it is clear.

Commissioner HOBBS. It apparently was not clear to the witness, because he started to ask you a question to clear it up.

(30. Q. Was read by the reporter.)

A. No; I didn't have to work only eight hours, there.

Mr. DRYSDALE. You have answered.

160 Page 123:

By Commissioner HOBBS:

D. 31. Q. You mean, anything in addition to your regular tour of duty?

A. No; that is all, just the eight hours I worked.

By Mr. DRYSDALE:

D. 32. Q. I will give you a hypothetical question. Suppose you were assigned on a regular tour of duty, regular tour of eight-hour duty, at the car ferries, on Sundays and holidays, did you get extra compensation for it?

A. Yes.

D. 33. Q. Always?

A. Always.

161 EARL A. BUSHEY

12/17/41

Page 100:

6. D. Q. You are one of the inspectors who have been selected by the Detroit customs men to represent them in this overtime litigation, are you not?

A. Yes, sir.

7. D. Q. You helped prepare the schedules, or the Exhibit A—that is, the itemized statement of claim, of the litigants in these 27 cases, did you not?

A. I did.

Page 101:

17. D. Q. Now, during the period of time involved in the plaintiff's claims, namely, from 1931 to 1937, at what stations in Detroit was extra compensation paid for Sunday and holiday services?

Mr. STALEY. You mean to this man?

By Mr. DRYSDALE:

Page 102:

18. D. Q. Do you know?

A. Yes.

Mr. STALEY. I object to his testifying what is paid to other men.

By Commissioner HOBBS:

19. D. Q. Do you know?

Mr. DRYSDALE. He knows what the practice was.

Mr. STALEY. We have before us five claims, if the Court please, and it is a problem what was done with respect to the five men, whose cases are test cases. That was done just to avoid the necessity of going through the records of a large number of men.

Commissioner HOBBS. He will have to testify with respect to his personal knowledge in the matter.

By Mr. DRYSDALE:

20. D. Q. Do you know whether or not at the Port of Detroit extra compensation was paid for Sunday and holiday services at any of the stations during this period?

A. Yes.

21. D. Q. At what stations?

162 Page 102:

21. D. A. The Wabash car ferry, the Pere Marquette car ferry, the Grand Trunk slip dock, and the Michigan Central passenger station.

22. D. Q. Are those stations referred to as the "car ferries"?

Page 103:

A. Yes; the three of them are.

Page 106:

32. D. Q. When you performed services, on Sundays and holidays, at the car ferries, did you always get extra compensation?

A. Yes.

Page 109:

47. X Q. At the time you received your appointment, in 1930, you were assigned 44-hour-week periods of duty?

Page 110:

A. No.

48. X Q. Were you assigned daily 8-hour tours of duty every 24 hours?

A. Yes.

49. X Q. And were those assignments for any hours of any 24?

A. Yes.

50. X Q. And you received no extra compensation for any services rendered during those regularly assigned 8-hour tours of duty?

A. That is—it would depend on the station we were working at, whether the answer would be Yes or No.

51. X Q. What station did it depend on?

A. At the Ambassador or Detroit and Canada Tunnel, we received no extra compensation. At the car ferries that I have mentioned, we regularly received extra compensation.

52. X Q. For services rendered during your regular assigned 8-hour daily tour of duty?

A. That is right. Our schedule was drawn up for two weeks.

163 Page 113:

72. X Q. All right. Now, give me the instances.

A. Any Sunday at the car ferries, on my regular tour.

73. X Q. I am asking you to produce the records.

Mr. DRYSDALE. He is answering the question. Let him go ahead.

Mr. STALEY. No; let him produce the records.

Mr. DRYSDALE. Go ahead, Mr. Bushey, and make the statement you started to make.

A. Any Sunday service at the car ferries or at the Michigan Central passenger depot, I received extra compensation for my regular tour of duty.

By Mr. STALEY:

74. X Q. I want you to give me any records you have there establishing that fact.

A. I do not believe my records will show the evidence that I was paid.

75. X Q. Extra compensation.

A. Just a minute. I have the vouchers here.

Mr. DRYSDALE. I think his testimony is explicit enough that when they worked at the car ferries he got his pay.

COMMISSIONER HOBBS. Let him testify.

Mr. STALEY. I move that counsel's observation be stricken from the record.

Page 114:

Mr. DRYSDALE. I know that there was never any doubt about it, Mr. Staley.

The WITNESS. Right.

Mr. STALEY. There has never been any doubt about anything in connection with the case, in my mind, either. The only difference is, we have a different set of facts.

A. On the 6th of October, for instance, 1935, I worked from 2 a. m. to 11:15 a. m. The voucher shows from midnight 12.01 a. m., to 8 a. m. I received $11.67.

By Mr. STALEY:

76. X Q. And that voucher does not show the work was performed at the car ferries?

164 Page 114:

A. It says at the Wabash boats.

77. X Q. At the Wabash boats?

A. Yes, sir; that is what it says.

78. X Q. Now, will you look at your records and tell me how many hours you had worked during that week, and whether or not that time was in excess of your regular 44-hour assigned week, or beyond or in addition to the 44 hours per week.

A. When would the week start?

79. X Q. I don't know.

A. Would the week start with Sunday, or——

80. X Q. You know how your weeks are handled out there better than I do.

A. There was 48 hours, if I have totaled it correctly, starting with Sunday, October 6, including Saturday, Oct. 12. I can give the hours each day if you want it.

81. X Q. I do not ask it. You do not know when your week of assignments started, do you—what day of the week they count?

A. The new schedule, if that——

82. X Q. (Interposing.) I mean back at that time, in 1935, when does it start—what day of the week?

A. I do not believe I am in position to answer when a week is considered to start. I would consider Sunday.

83. X Q. Do you know how it starts with respect to accounting methods?

A. No; I do not.

84. X Q. Are those hours which appear by the voucher you have consulted, hours of service designated by the assignment sheet for the 2-week period, or not?

A. You asked, the voucher—No.

165 Page 115:

85. X Q. That is, the voucher covers hours of service outside of your regular assignments, by the assignment sheet for that period?

Mr. DEYSDALE. I did not get that. What is that period again?

(85. X Q. Read by the reporter.)

A. The voucher does not agree with the time served.

Mr. STALEY. I am sorry—what is the new answer now?

Page 116:

(Answer to 85. X Q. read by the reporter.)

86. X Q. That, of course, does not apply. What I have in mind is, your assignment sheet usually covers the assignment for the two-week daily tour of duty?

A. That is right; that is right.

87. X Q. Now, what I mean is whether the service which is covered by the voucher is service which would be covered by the assignment sheet for regular tours of duty?

A. That answer is Yes.

88. X Q. That answer is Yes?

A. That's right.

89. X Q. And not outside of the regular tours of duty?

A. No—regular assignment.

90. X Q. And your extra pay is for services rendered—I only want to keep myself straight absolutely—covers services, the hours of which were provided for your being on active duty, by the 2-week assignment sheet?

A. That's right.

Mr. STALEY. All right; that is all.

166 Page 116:

91. R. D. Q. Now, so that I may get clear, Mr. Bushey—when you served a regular tour of duty, on Sundays and holidays, at the car ferries, did you always get extra compensation?

A. Yes. Pardon me, you said Sundays or holidays?

Page 117:

92. R. D. Q. Yes.

A. The answer is Yes.

93. R. D. Q. There is no question about that, is there?

Mr. STALEY. I object to the form of the question.

Commissioner HOBBS. Yes; I sustain the objection.

94. R. D. Q. Has that practice been in effect ever since you have been in the service?

Mr. STALEY. I object to the practice with respect to any other individual. It is different entirely from what the other witnesses have testified.

Mr. DRYSDALE. I understand that has already been passed upon. Will you answer the question?

Commissioner HOBBS. Yes.

A. The practice has not changed.

95. R. D. Q. I beg pardon?

A. There is no change in practice during my time in the service, with respect to Sunday and holiday services at the car ferry.

96. R. D. Q. Have you ever been required to make up these assignment sheets that you refer to?

A. Yes, I have.

97. R. D. Q. What do you call the man who does that?

Page 118:

A. He is one of the employees in the shore office that has supervision over the men on the car ferries. I made up those assignment sheets under the supervision of the man in charge of the shore office. We call them a "two-weeks schedule."

167 Page 118:

Mr. DRYSDALE. I think that is all.

Mr. STALEY. I move that the witness's testimony be stricken out as not coming within the five cases before the Commission. We do not know anything about the records of this man, whereas we have examined the records of the other men.

Commissioner HOBBS. The motion is denied.

168 HARRY W. SMITH

7/21/41

Page 42:

By Commissioner RAMSEYER:

X Q. 149. Mr. Smith, there is just one question. I think maybe you have stated it. On the basis of $2,100 a year, what figure did you take as the daily pay?

A. $5.83.

169. Page 89:

CHARLES C. MARTIN

61. Q. Do you get compensatory time off during the week?
A. Yes, sir.
62. Q. And always have?
A. Yes, sir; we get compensatory time.

170 [Clerk's certificate to foregoing transcript omitted in printing.]

U. S. GOVERNMENT PRINTING OFFICE: 1943

Supreme Court of the United States

No. 142, October Term, 1943

Order allowing certiorari

Filed October 11, 1943

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Supreme Court of the United States

No. 143, October Term, 1943

Order allowing certiorari

Filed October 11, 1943

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Supreme Court of the United States

No. 144, October Term, 1943

Order allowing certiorari

Filed October 11, 1943

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Supreme Court of the United States

No. 145, October Term, 1943

Order allowing certiorari

Filed October 11, 1943

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Supreme Court of the United States

No. 146, October Term, 1943

Order allowing certiorari

Filed October 11, 1943

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE